

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**In re:**

**EMERGENCY AUTHORIZATION FOR  
COASTAL ARMORING IN VOLUSIA AND  
FLAGLER COUNTY MADE NECESSARY  
BY HURRICANES IAN AND NICOLE**

**OGC NO. 22-2740**

**THIRD AMENDED EMERGENCY FINAL ORDER**

The State of Florida Department of Environmental Protection (Department) enters this Third Amended Emergency Final Order (Order), including Findings of Fact and Conclusions of Law, 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 Ian and Hurricane Nicole (hereinafter “the Storms”). This Third Amended Emergency Final Order restates the provisions of Emergency Final Order 22-2740, issued on October 28, 2022, December 1, 2022, and February 15, 2023, and amends the provisions of those orders.

**FINDINGS OF FACT**

1. Hurricane Ian made landfall on Florida’s southwest coast on September 28, 2022, as a Category 4 storm. Hurricane Ian brought dangerous storm surge, rainfall, strong winds, hazardous seas, tornadic activity, and widespread damage throughout much of the State. Hurricane Ian caused substantial erosion and damage to the beach system in Volusia County and portions of Flagler County. As a result, many homes and other major structures are uninhabitable and are in danger of collapse. The threat of additional storms and adverse weather conditions have the potential to increase that damage and render these properties even more vulnerable to collapse. Immediate action is warranted to protect coastal homes and structures in Volusia County and portions of Flagler County between DEP Reference Monuments R-50 and R-55.25, which shall

constitute the area covered by this Emergency Final Order. This area shall herein be referred to as the “Emergency Area.”

2. By State of Florida Executive Orders No. 22-218, 22-219, 22-268, and 23-21, the Governor declared that a state of emergency exists throughout the State of Florida based upon the serious threat to the public health, safety, and welfare posed by Hurricane Ian.

3. Hurricane Nicole made landfall near Vero Beach, Florida on November 10, 2022, as a Category 1 Hurricane. Hurricane Nicole moved across Florida’s Peninsula and then north, impacting Florida’s Big Bend and North Florida causing dangerous storm surge, heavy rainfall, flash flooding, strong winds, hazardous seas, tornado activity, and widespread damage. Hurricane Nicole increased the already substantial erosion and damage to the beach system caused by Hurricane Ian in Volusia County and parts of Flagler County. As a result, homes and structures which were damaged or made vulnerable due to impacts from Hurricane Ian, experienced further damage and in some cases, collapsed after Hurricane Nicole.

4. By State of Florida Executive Orders No. 22-253, 22-255, 22-256, and 23-02, the Governor declared that a state of emergency exists throughout the Emergency Area based upon the serious threat to the public health, safety, and welfare posed by Hurricane Nicole.

3. The Department finds that the effects of the Storms, which impacted the same area of the state within a period of less than six weeks, created a state of emergency posing an imminent danger to the public health, safety, welfare, and property throughout the Emergency Area, particularly between Department Reference Monuments R51 and R143, R161 and R194, and R50 and R55.25. As a result of the emergency,

immediate action may be necessary to protect coastal structures and homes damaged by the Storm.

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 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 to cope with the emergency. In addition, the Department finds that the actions authorized under this Order are narrowly tailored to address the immediate need for action and 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 Storms 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 Orders No. 22-218, 22-219, 22-268, 23-21, 22-253, 22-255, 22-256, and 23-02 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. COASTAL ARMORING FOR MAJOR STRUCTURES LOCATED IN THE EMERGENCY AREA:**

The following rules are waived for proposed coastal construction activities seaward of the Coastal Construction Control Line as specified in Rule 62B-26.023, F.A.C. as a result of the Storm:

1. Rule 62B-33.002(27), F.A.C.; defining the term “major reconstruction” as the complete or partial replacement or rebuilding to the original level of protection of a significant portion of an existing armoring structure which has failed or deteriorated. This waiver omits the reference to the original level of protection to allow for armoring structures to be built to a level other than the original level of protection; however, the cap elevation of the reconstructed armoring shall not exceed the cap elevation of the original armoring structure;
2. Rule 62B-33.002(12)(b)1., F.A.C.: shall remove the word “non-conforming” which will allow any habitable structure to qualify as “eligible” for armoring;
3. Rule 62B-33.0051(1)(b), F.A.C.; prohibiting a permit for armoring being issued where a beach nourishment, beach restoration, sand transfer, or other project which would provide protection for the vulnerable structure is scheduled for construction within nine months;
4. Rule 62B-33.0051(1)(a)2., F.A.C.: requiring that a structure to be protected by armoring be “vulnerable” on the shoreline between Department Reference Monuments R51 and R143 and between R161 and R194 in Volusia County and between Department Reference Monuments R50 and R55.25 in Flagler County. This order finds that eligible structures located between Department Reference Monuments R51 and R143 and between R161 and R194 in Volusia County, and between Department Reference Monuments R50 to R55.25 in Flagler County, are vulnerable within the meaning of the rule;

5. Rule 62B-33.002(59), F.A.C.: revising the definition of the term “vulnerable” to replace the reference to a 15-year return interval storm with a reference to a 25-year return interval storm. The waiver authorizes armoring structures to be built to protect a structure from direct wave attack or erosion from a 25-year return interval storm which exposes any portion of the foundation for structures in Volusia County not covered by paragraph A.4; and
6. Section 161.085(2)(a) and (b), F.S.: limiting authorization of coastal armoring structures to protect only existing private structures and public infrastructure. This waiver authorizes installation of new coastal armoring for parcels that previously contained a major habitable structure or public infrastructure that was lost or substantially damaged by the Storm and is intended to be rebuilt in the previous footprint, as long as all other coastal armoring permitting criteria is met. “Substantially damaged” means a cumulative total of 50 percent of the market value of the structure, before the repair is started or, if the structure has been damaged and is being restored, before the damage occurred.
7. Rule 62B-33.0051(1)(d)., F.A.C. revising the prohibition of major reconstruction of existing armoring protecting vacant property. This waiver exempts major reconstruction of existing armoring from the conditions of paragraph 62B-33.0051(1)(a)1. and 2., F.A.C., provided that the proposed construction would not result in a significant adverse impact to the beach and dune system.
8. For DEP permits issued in Volusia County for construction and/or activities made necessary as a result of the Storm, guidance provided in FWC’s letter to Volusia County (see attachment A), dated April 13, 2023, shall supersede permit

conditions specifically related to the commencement and continuation of work during marine turtle nesting season.

Further, any petition filed under Section 120.542, F.S., but not yet acted on by the Department, to waive the requirements set forth in 2. above for structures located in the Emergency Area is rendered moot by the provisions of this Emergency Final Order. 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, F.A.C. The Department intends to expedite issuance of such permits in the Emergency Area upon receipt of a complete application. Permits for coastal armoring seeking relief as specified above must be applied for 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 Volusia or Flagler County pursuant to Department Emergency Final Order No. 22-2740 must be submitted to the Department within 60 days of installation.

## **B. GENERAL PROVISIONS**

### **1. General Limitations**

The Department issues this Order solely to address the emergency created by the Storm. 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 for its duration.

## **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 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 compliance with this Order.

## **4. Expiration Date**

This Order shall take effect immediately upon execution and shall expire upon expiration or rescission of EOs 22-218, 22-219, 22-268, 23-21, 22-253, 22-255, 22-256, and 23-02, whichever expires last, as modified or extended.

## **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 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 28th day of April 2023, in Tallahassee, Florida.

### FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION



Digitally signed by Shawn  
Hamilton  
Date: 2023.04.28 13:46:07  
-04'00'

Shawn Hamilton, 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.

Lea  
Crandall

Digitally signed by Lea  
Crandall  
Date: 2023.04.28  
14:30:18 -04'00'

CLERK

4/28/23

DATE



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MyFWC.com

April 13, 2023

Clay Ervin  
Volusia County  
Growth & Resource Management  
123 Indiana Ave. Room 200  
DeLand, FL 32720

RE: Volusia County Hurricane Recovery and Sea Turtle Protection Update

Dear Clay,

Florida Fish and Wildlife Conservation Commission (FWC) staff has been coordinating closely with the Florida Department of Environmental Protection (DEP) on permit applications to construct storm protection for properties in Volusia County. FWC staff is quickly providing recommendations to DEP when applications are received to assist property owners as they work to protect their property. While it appears many properties have installed temporary protection, there are still property owners who have either received permits and have not been able to begin construction or have not completed the permit application process. Due to this, FWC staff is developing opportunities for construction work to continue into marine turtle nesting season. FWC staff will be including specific conditions for DEP permitted shoreline protection construction to continue or to begin after May 1. We have discussed the actions listed below with the U.S. Fish and Wildlife Service, and they are supportive of us working with Volusia County to implement these actions moving forward.

Although marine turtle nesting season for Volusia County is identified as starting on May 1, nesting will peak during June and July. In coordination with the USFWS, the FWC has identified the following options for property owners, depending on where they are in the permitting and construction process:

### **Property owners that have DEP permits issued prior to May 1 and have begun construction:**

Property owners who have obtained a permit from DEP and have ongoing contracted work to construct or repair shoreline armoring can continue work past May 1<sup>st</sup> according to the marine turtle protection conditions that have been provided by FWC and listed in the DEP permit. Work past May 1<sup>st</sup> should continue uninterrupted without scheduled delays until completed and will need to meet the following requirements:

- Site preparation conducted by a contractor as identified in the DEP permit is considered ongoing construction.
- Site preparation may include removal or installation of armoring or temporary barriers (e.g., trap bags, plywood, or chain link fence) located in the footprint of the approved construction as allowed in the DEP permit.

**Property owners that have DEP permits issued prior to May 1 but have not been able to begin construction before May 1:**

Property owners who have obtained a permit from DEP and plan to work during the marine turtle nesting season may initiate site preparation work after contacting FWC to determine if marine turtle nests are located on site and prior to all construction materials being provided to the site. When all materials are available to complete the shoreline protection project, construction or repair of shoreline armoring work can be initiated past May 1<sup>st</sup> according to the conditions listed in the DEP permit. Work should continue uninterrupted without scheduled delays until completed.

- The permittee or the permittees contractor must contact FWC prior to any work to determine if marine turtle nests occur on site and what actions may be required prior to initiating site preparation.
- Site preparation conducted by a contractor as identified in the DEP permit is considered initiating construction and may begin after the DEP permit is issued and FWC has confirmed there are no marine turtle nests in the construction site.
- Site preparation may include temporary installation of construction fencing (e.g., trap bags, plywood, or chain link fence) located in the footprint of the approved construction as allowed in the DEP permit.

**Property owners that have DEP permits issued after May 1:**

Property owners who have obtained a permit from DEP after May 1 and plan to work during the marine turtle nesting season may initiate site preparation work after contacting FWC to determine if marine turtle nests are located on site and prior to all construction materials being provided to the site. Upon receipt of a DEP permit and confirmation from FWC that no nests are present, contracted work site preparation may be initiated prior to all construction materials being provided on site and according to the conditions of the DEP permit. Work past May 1<sup>st</sup> should continue uninterrupted without scheduled delays until completed.

- Site preparation conducted by a contractor as identified in the DEP permit is considered ongoing construction and may begin with issued DEP permit.
- Site preparation may include temporary construction fencing (e.g., trap bags, plywood, or chain link fence) located in the footprint of the approved construction as allowed in the DEP permit.

Clay Ervin  
Page 3  
April 13, 2023

Thank you for your continued coordination. If you have any questions or would like to discuss other opportunities please contact me at [ron.mezich@myfwc.com](mailto:ron.mezich@myfwc.com), Eric Seckinger at [Eric.Seckinger@myfwc.com](mailto:Eric.Seckinger@myfwc.com), or either of us at 850-922-4330.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron Mezich". The signature is fluid and cursive, with the first name "Ron" being more legible than the last name "Mezich".

Ron Mezich  
Florida Fish and Wildlife Conservation Commission  
Section Leader  
Imperiled Species Management

Cc: G. Basili, USFWS  
R. Carey, USFWS  
D. Tompkins, USFWS  
L. Edwards, FDEP  
D. Aarons, FDEP