

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**In re:**

**EMERGENCY RELIEF FOR  
STORMWATER EFFECTS RESULTING  
FROM HURRICANE MATTHEW**

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**OGC NO. 16-1327**

**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. 16-230 and the following findings of fact, 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 or immediate danger to the public health, safety, and welfare of the citizens of the State of Florida resulting from Hurricane Matthew (Hurricane).

**FINDINGS OF FACT**

1. On October 6, 2016, the Hurricane caused significant impact to Florida's east coast bringing substantial rainfall and storm surge along Florida's east coast from St. Lucie County through Nassau County (the Impacted Area). As a result of the Hurricane, the Impacted Area experienced heavy flooding, resulting in severe impacts to local businesses and homes and limiting vehicular access in certain circumstances.
2. Local governments are responsible for the management of stormwater within their jurisdictions.
3. By State of Florida Executive Order No. 16-230, the Governor declared that a state of emergency exists throughout the State, based upon the serious threat to

the public health, safety, and welfare posed by the Hurricane.

4. The Department entered its Emergency Final Order *In re: Emergency Authorization for Repairs, Replacement, Restoration, and Certain Other Measures Made Necessary by Hurricane Matthew*, OGC No. 16-1319, on October 5, 2016 (10-5 Order). While the 10-5 Order anticipates actions such as those specifically authorized herein, additional clarity will be beneficial to the local governments as they respond to flooding, and other events, brought on by Hurricane Matthew.

5. The Department is entering this Order to protect human health and safety and property.

#### **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 No. 16-230, 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 Emergency Final Order.

#### ***THEREFORE, IT IS ORDERED:***

1. The local governments within the Impacted Area are authorized to install stormwater drainage systems (pumping stations) throughout the Impacted Area to mitigate the stormwater impacts related to the Hurricane. Entities other than local governments may install and operate stormwater drainage systems in compliance with this Order with written or verbal permission from the Department. The local governments and any other entities authorized by the Department shall be referred to

herein as the "Responsible Entity," in the singular, or the "Responsible Entities," when referring to them collectively.

**SPECIFIC CONDITIONS:**

A. Any Responsible Entity within the Impacted Area acting under this Order shall notify the local Department District Office when any activities under this Order are commenced. The Responsible Entity shall also contact the Department's Coastal Construction Control Line Program when the beach system is being impacted by the stormwater drainage system. The Responsible Entity shall provide the Department with a description and location of the stormwater drainage system including any necessary construction activities and volumes being pumped. The Responsible Entity shall contact the appropriate Department District Office daily to confirm the volumes of stormwater discharged, the current status of any flooding to the area covered, and to discuss the need to continue any further activities, including pumping, under this Order. The Responsible Entity shall additionally notify the above offices when pumping activities cease. Notification shall be made verbally or by email and followed up in writing within 3 days.

B. No impacts to dunes or dune vegetation are authorized. In the event any vegetation is impacted, the Responsible Entity is responsible for restoring the area to pre-project conditions.

C. All pumping activities shall be monitored by at least one individual employed by the Responsible Entity at all times.

D. The outfall of the discharge pipe shall be located below the mean high water line at all times.

E. When pumping activities begin, the applicable County Health Unit as well as the State Department of Health shall be notified, so that appropriate advisory warnings and posting may occur.

F. Construction related activities are authorized to occur on the nesting beach seaward of the dune crest under the following conditions:

1). A daily marine turtle nest survey of the nesting beach in the vicinity of the project (including areas of beach access) shall be conducted each day until completion of the activity. All nests in the project area and on the beach between the project and access sites shall be marked by stake and survey tape or string in a circle with a radius of ten (10) feet or as needed to ensure the safety of the nest. No construction activities shall enter the circle marking the nest and no adjacent construction shall be allowed that might directly or indirectly disturb the area within the staked circle.

2). Nest inventories shall be conducted on all marked nests in accordance with Florida Fish and Wildlife Commission's (FWC) Sea Turtle Protection Guidelines.

3). No construction activity may commence until completion of the marine turtle survey each day. Please contact the FWC to coordinate all marine turtle protection requirements.

4). It is the responsibility of the Responsible Entity to ensure that the project area and access sites are surveyed for marine turtle nesting activity. All nesting surveys, nest relocations screening or caging activities etc. shall be conducted only by persons with prior experience and training in these activities and who is duly authorized to conduct such activities through a valid permit issued by the FWC, pursuant to Florida Administrative Code 68E-1.

5). All excavations and temporary alteration of beach topography shall be filled or leveled to the natural beach profile after project completion. The beach surface shall be inspected subsequent to completion of the project and all tracks, impressions, scarps, or ponding due to the project or movement of heavy equipment across the beach shall be removed.

6). No temporary lighting of the project area is authorized.

2. This Order does not provide relief from the requirements of other federal, state, water management districts, and local agencies, if applicable. This Order therefore does not negate the need for the facilities 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 of the Florida Statutes regarding professional engineering.

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

4. This Emergency Final Order shall take effect immediately upon execution by the Secretary of the Department, or his designee, and shall expire on November 2, 2016, unless modified, extended, or cancelled by further Order.

#### **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, 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 thirty (30) days after this Order is filed with the Clerk of the Department.

**DONE AND ORDERED** on this 8<sup>th</sup> day of October, 2016, in Tallahassee, Florida.

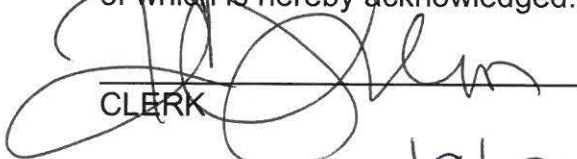
FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION



Jonathan P. Steverson, 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

DATE: 10/8/2016