

**STATE OF FLORIDA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**In re:**

**EMERGENCY AUTHORIZATION FOR  
REPAIRS, REPLACEMENT,  
RESTORATION, AND CERTAIN  
OTHER MEASURES MADE NECESSARY  
BY SUBTROPICAL STORM NICOLE**

**OGC NO. 22-2816**

**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 Subtropical Storm Nicole (hereinafter “the Storm”).

**FINDINGS OF FACT**

1. The National Hurricane Center indicates that Subtropical Storm Nicole has formed off Florida’s East Coast and is likely to move toward Florida bringing potential impacts to areas still recovering from Hurricane Ian. There is a risk of dangerous storm surge, heavy rainfall, flash flooding, strong winds, hazardous seas, and the potential for isolated tornados within Florida’s peninsula. The Storm poses a threat to the health, safety, and welfare to the communities, infrastructure, and citizens of the State of Florida. The Storm is expected to cause widespread damage within the following locations: Brevard, Broward, Charlotte, Citrus, Clay, Collier, DeSoto, Duval, Flagler, Glades, Hardee, Hendry, Highlands, Hillsborough, Indian River, Lake, Lee, Manatee, Martin, Miami-Dade, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Polk, Putnam, Sarasota, Seminole, St. Johns, St. Lucie, Sumter, and Volusia 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 No. 22-253, 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 the Storm.

3. The Department finds that the effects of the Storm create a state of emergency posing an imminent danger to the public health, safety, welfare, and environment throughout the Emergency Area. As a result of the emergency, immediate action by the Department, 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 Storm.

4. The Department finds that an emergency authorization is required to address the need for immediate action because the normal procedures and restrictions for obtaining and providing the necessary funding and/or 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 Storm poses an immediate danger to the public health, safety, or welfare and requires an immediate order from the Department.

2. Under State of Florida Executive Order No. 22-253, 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. WASTE MANAGEMENT**

Within the Emergency Area the Department waives Rules 62-761.405 and .700, and 62-762.411 and .701, F.A.C., to the extent necessary for:

##### **1. Storage Tank Systems**

a. Owners and operators of storage tank systems, regulated under Chapters 62-761 and 62-762, Florida Administrative Code, and their State of Florida licensed engineers and contractors, are authorized to make all necessary repairs to restore essential services and repair or replace (as necessary) all structures, equipment, and appurtenances of the systems to their pre-Storm permitted or registered condition without prior notice to the Department. Within 30 days of commencing the work of such repair or replacement, the owner or operator shall notify the Department in writing, describing the nature of the work, giving its Department Facility Identification Number for the location,

and providing the name, address, and telephone number of the representative of the owner or operator to contact concerning the work.

b. Petroleum Contact Water: Owners and operators of underground petroleum storage tank systems impacted by the Storm are authorized to discharge petroleum contact water, as defined in Rule 62-740.030, Florida Administrative Code, to impervious surfaces under the following conditions for only the first 30 days from the initial issuance date of this Order:

- (1) The total discharge shall not exceed 25 gallons in volume per facility;
- (2) There shall be no visible sheen, sludge or emulsion in the petroleum contact water; and
- (3) The discharge shall not reach a surface water of the state or stormwater management system.

The removal of petroleum contact water not meeting the above criteria shall be removed by vacuum truck for proper disposal pursuant to Chapter 62-740, Florida Administrative Code, or by separate authorization by contacting the Department's Division of Waste Management by mail at 2600 Blair Stone Road, Mail Station 4525, Tallahassee, Florida 32399-2400 or telephone at 850/245-8842.

## **2. Solid Waste Management**

a. Pursuant to Section 403.7071, F.S., storm generated debris shall be managed at authorized staging areas or Disaster Debris Management Sites (DDMS) in accordance with the [Division of Waste Management's Guidance for the Establishment, Operation, and Closure of Disaster Debris Management Sites](#).

b. The Department waives Rule 62-701.320(4), F.A.C., to the extent that permitted landfills, waste-to-energy facilities, and transfer stations which accept Storm-generated debris in accordance with the terms of this Order may accept Storm-generated debris for disposal or storage without the need to first modify existing solid waste permits or certifications. Operators of landfills shall seek modifications of their existing permits to address any long-term impacts of accepting Storm-generated debris on operations and closure that are not addressed in existing permits. Long-term impacts are those which will extend past the expiration date of this Order. The requests for modification shall be submitted as soon as possible, but no later than the expiration date of this Order. No permit fee will be required for any modifications necessitated solely by the Storm cleanup activities. This paragraph does not authorize the permanent lateral or vertical expansion of any facility beyond its permitted limits. Domestic wastewater biosolids may be disposed of in Class I landfills even if such biosolids meet the definition of a liquid waste found in Rule 62-701.200(72), Florida Administrative Code, provided that such disposal is approved in advance by the Department and that the material

c. Pursuant to Section 403.7071, Florida Statutes, open burning of Storm-generated debris is allowed provided it meets the following requirements and does not create a public nuisance. Please refer to the Division of Air Resource Management's [Guidance on Site Selection Criteria for Open Burning Activities](#) for additional information.

(1) An air curtain incinerator may be used at any staging area, permitted landfill, waste-to-energy facility, registered yard trash processing facility, or transfer station so long as the operator meets the operating requirements detailed in the Division of Air

Resource Management's [Air Curtain Incinerator Worksheet](#) and does not create a public nuisance.

(2) Open pile burning may be conducted at any staging area other than staging areas located at permitted landfills or permitted disposal facilities so long as the operator meets the operating requirements detailed in the Division of Air Resource Management's [Open Pile Burning Worksheet](#) and does not create a public nuisance.

### **3. Hazardous Waste Management**

A blanket approval of time extensions under Rule 62-730.160, Florida Administrative Code, is necessary within the Emergency Area for hazardous waste generators for the storage of their hazardous wastes on-site, pending the cleanup of any Storm damage and restoration of essential services. The rules authorize a 30-day extension because of unforeseen and uncontrollable circumstances such as the Storm. Therefore, to avoid having to issue a potentially large number of individual approvals on a case-by-case basis and waste limited agency resources during the time of emergency, the Department authorizes a general extension of time of 30 days from the expiration of this Order for all such hazardous waste generators within the Emergency Area for the storage of their hazardous wastes on-site.

### **4. Mineral Oil Dielectric Fluid Discharges**

A blanket approval of time extensions under Rule 62-780.550, Florida Administrative Code, is necessary within the Emergency Area for responding to and completing the cleanup of mineral oil dielectric fluid (MODEF) discharges from electric power generation, transmission, and distribution facilities damaged by the Storm within the Emergency Area. The Department authorizes a general extension of time of 30 days

from the date of discovery of a nonpetroleum de minimis discharge (for a total of 60 days from the discovery of the discharge) for responding to and completing cleanup of MODEP discharges from electric power generation, transmission, and distribution facilities damaged by the Storm within the Emergency Area in accordance with the applicable provisions of Chapter 62-780, Florida Administrative Code. However, all other provisions of Rule 62-780.550, Florida Administrative Code, such as the record-keeping requirements, shall apply.

## **B. AIR RESOURCE MANAGEMENT**

Within the Emergency Area:

### **1. Open Burning Operations**

a. Pursuant to Section 403.7071, Florida Statutes, open burning of storm-generated yard trash, other storm-generated vegetative debris, or untreated wood from construction and demolition debris is allowed provided it meets the following requirements and does not create a public nuisance. Please refer to the Division of Air Resource Management's [Guidance on Site Selection Criteria for Open Burning Activities](#) for additional information in preventing public nuisances.

(1) Air curtain incinerators may be used in the Emergency Area for a period of up to eight (8) weeks without a Department-issued air permit to combust storm-generated yard trash, other storm-generated vegetative debris, or untreated wood from construction and demolition debris so long as the operator meets the operating requirements detailed in the Division of Air Resource Management's [Air Curtain Incinerator Worksheet](#) and do not create a public nuisance.

(2) Local governments or their agents may conduct the open pile burning of Storm-generated yard trash, other Storm-generated vegetative debris, and untreated wood from construction and demolition debris at Department-authorized staging areas (other than staging areas located at permitted landfills or permitted disposal facilities), so long as they meet the operating requirements detailed in the Division of Air Resource Management's [Open Pile Burning Worksheet](#).

**2. Asbestos**

40 CFR Part 61, Subpart M does not apply to the renovations or demolitions of residential buildings with four or fewer dwelling units. Owners of these types of residential buildings may commence a renovation or demolition without notice to the Department. For more information on asbestos regulation, please review the Division of Air Resource Management's factsheets on [Asbestos Emergency Cleanups](#) and [Asbestos Building Debris Cleanup](#).

**3. Emergency Engines Exempt from Air Permitting Requirements**

Reciprocating internal combustion engines in the Emergency Area may exceed the annual fuel consumption limitations in Rule 62-210.300(3)(a)35., Florida Administrative Code, without triggering the need to receive a Department-issued air permit if the engine is being used for disaster-related purposes. The owner or operator of such an engine shall exclude fuel consumed during the period covered by this Order from annual fuel consumption calculations.

**C. WATER RESOURCE MANAGEMENT, RESILIENCY, AND COASTAL PROTECTION**

Within the Emergency Area:

1. **Environmental Resource, Dredge and Fill, and Surface Water Management Activities**
  - a. **No Notice Required**

The Department waives Rule 62-330.020, F.A.C., to the extent that 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 Storm, 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 Storm, 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 Storm, 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 Storm, subject to subparagraph B.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 Storm may be used in the restoration, and no change (from the conditions that legally existed immediately prior to the Storm) 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 October 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 Storm. If the pre-Storm 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 Storm, 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 (C.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 Storm, 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 Storm, 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 C.2.a. of this Order. Specifically, field authorizations may be issued for:

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

(b) Structures and activities on state-owned submerged lands: non-water dependent structures and are authorized in a current sovereign submerged land lease with the Department may not 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) 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 Storm, 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 Storm; 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 Storm.

(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 C.6.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.

**c. Activities occurring in State Assumed Waters (State 404)**

This section applies to activities to abate Storm related emergency conditions conducted within the Emergency Area in State Assumed waters pursuant to Chapter 62-331, Florida Administrative Code. An Emergency Field Authorization (Rule 62-331.110, Florida Administrative Code) will be required for such activities that don't meet the exemption in 40 CFR § 232.3(c)(2).

**2. Coastal Construction Control Line ("CCCL") Activities**

This section applies to activities conducted within the Emergency Area seaward of the CCCL as established by Chapter 62B-26, Florida Administrative Code. Emergency Permits may be issued by the Division of Resilience and Coastal Protection pursuant to Rule 62B-33.014, Florida Administrative Code. A list of activities seaward of the CCCL that are exempt from CCCL permitting requirements is contained in Rule 62B-33.004, Florida Administrative Code, and Section 161.053(11), Florida Statutes. The Division of Resilience and Coastal Protection has developed a Public Information Handout to provide property owners with a concise explanation of activities that are authorized seaward of the CCCL in this Order. To obtain a copy, please visit the Coastal Construction Control Line Emergency Permits website at <https://floridadep.gov/rcp/coastal-construction-control-line/content/coastal-construction-control-line-emergency-permits>. You may also contact the Office of Resilience and Coastal Protection directly by email at [CCCL@FloridaDEP.gov](mailto:CCCL@FloridaDEP.gov), by mail at 2600 Blair Stone Road, Mail Station 3522, Tallahassee, Florida 32399-3000, or by phone at 850/245-2094.

This Order constitutes the declaration of a shoreline emergency and activates emergency protection and permitting procedures established in s. 161.085 (3), Florida Statutes, and in Rules 62B-33.0051(5) and 62B-33.014, Florida Administrative Code.

In addition, to emergency protective measures that can be conducted under the above referenced statute and rules, this Order authorizes both the protection, repair or replacement of public infrastructure and a local government's ability to issue certain coastal construction permits in lieu of Department CCCL permits, subject to the conditions and limitations of this Order. Activities, activities that extend onto state owned lands of Florida seaward of the mean high water line or an Erosion Control Line that would typically require a permit pursuant to Sections 161.041 and/or 161.055, Florida Statutes, i.e., regulated under the Joint Coastal Permit program (JCP), are not authorized under this subsection. JCP activities are addressed separately in subsection C.3. of this Order.

**a. Activities Undertaken by Local Governments, the Department of Environmental Protection, Florida Department of Transportation and Utility Companies**

The Department waives Rules 62B-33.005 and .0051, F.A.C., to the extent that the following activities may be undertaken by local governments, agencies of the State of Florida, and utility companies to protect, repair, or replace structures and property without notice to the Department or water management district, subject to the limitations below. Work performed under paragraph C.3.a. of this Order must be complete within one year of the issuance of this Order.

(1) Removal of Storm-generated debris. Prior to removing the debris and to the greatest extent possible, beach compatible sand should be separated from the debris and

kept on-site. To prevent debris from becoming buried, all Storm-generated debris shall be removed to an appropriate upland disposal site landward of the CCCL prior to conducting any fill activities.

(2) The repair or replacement of the following public facilities: utilities, roads, beach access ramps, and dune walkover structures (see guidelines for construction of dune walkovers at <https://floridadep.gov/rcp/coastal-construction-control-line/documents/beach-and-dune-walkover-guidelines>).

(3) Return of sand to the beach and dune system that has been deposited upland by the Storm, and restoration of a dune system using beach compatible sand from an upland source. The material shall not cover any Storm-generated debris or construction debris. All fill material shall be sand that is similar to the pre-Storm beach sand in both coloration and grain size and be free of debris, rocks, clay, or other foreign matter and shall meet the specifications set forth by the Department for the location that the fill is being placed. Such specifications are available at <https://floridadep.gov/rcp/coastal-construction-control-line/content/coastal-construction-control-line-emergency-permits>. 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.

**b. Activities Requiring Local Authorization**

Local governments are authorized to issue permits in lieu of Department permits to private and public property owners for the activities listed below in addition to the temporary protective measures described in section 161.085 (3), Florida Statutes, and Rule 62B-33.0051, Florida Administrative Code. Local governments shall notify the

Department in writing within three (3) working days of permits issued under this section. The notification must be submitted to the Department by email to [CCCL@FloridaDEP.gov](mailto:CCCL@FloridaDEP.gov). Work authorized by the local government must be complete within 90 days of issuance of the local government permit or within 90 days of the expiration date of this Order, whichever deadline occurs first.

(1) Repair or replacement of minor ancillary structures (such as stairs, landings, and HVAC platforms) and service utilities that are associated with the existing habitable structure. The repair of minor ancillary structures or service utilities shall not exceed the size of the original structure or service utility damaged or destroyed by the Storm. Repair of surviving beach/dune walkovers is authorized provided the structure is substantially intact and the repair adjusts the seaward terminus of the walkover to a more landward location to accommodate changes in the shoreline topography and native salt-resistant vegetation patterns. Viewing platforms as part of the walkovers may not be constructed on or seaward of the surviving or post-Storm rebuilt dune system or sandy beach, as specified in subparagraph C.3.c.(2)(d) of this Order.

(2) Permanent repair of foundations for buildings that have not been substantially damaged.

(3) The replacement or repair of caps and anchoring systems (or tiebacks) for seawalls or bulkheads.

(4) Restoration of a dune system damaged by the Storm using beach compatible sand from an upland source.

All fill material shall be sand that is similar to the pre-Storm beach sand in both coloration and grain size and be free of debris, rocks, clay, organic matter, or other foreign

matter and shall meet the specifications set forth by the Department for the location that the fill is being placed. Such specifications are available at <https://floridadep.gov/rcp/coastal-construction-control-line/content/coastal-construction-control-line-emergency-permits>. No sand may be obtained from the beach, near shore, or below mean high water seaward of the CCCL without specific written authorization from the Department.

(5) Return of sand to the beach dune system which has been deposited upland by the Storm.

The recovered sand shall be free of debris and other foreign matter and shall not cover any Storm-generated debris or construction debris.

**c. Other Activities**

Actions taken by local governments, the Department's Division of Recreation and Parks, Florida Department of Transportation, and utility companies under paragraph C.3.a. of this Order, and actions taken by local governments under paragraph C.3.b. of this Order, do not require additional permits from the Department.

**3. Joint Coastal Permit Activities**

This subsection applies to certain activities along the natural sandy beaches of the Atlantic Ocean, Gulf of Mexico or Straits of Florida that extend onto sovereignty lands of Florida, seaward of the mean high water line and are likely to have a material physical effect on the coastal system or natural beach and inlet processes, i.e., activities that are regulated under the JCP program, pursuant to Sections 161.041 and/or 161.055, Florida Statutes. The Department waives Rules 62B-41.005 and .0055, F.A.C., to the extent necessary so that:

a. In lieu of a normal JCP for activities summarized above, federal, state, or local governments may apply to the Office of Resilience and Coastal Protection, Beaches, Inlets and Ports Program for emergency authorizations to alleviate hazardous conditions resulting from the Storm that pose an immediate danger to life or limb, including sudden and unpredictable hazards to navigation. Applications for emergency authorizations shall meet the following criteria:

(1) The application must be received by the Department during the duration of this Order;

(2) The hazardous conditions are a result of the Storm identified in this Order and did not exist prior to the Storm;

(3) The proposed measures are limited to the minimum amount necessary to alleviate the hazardous conditions by temporarily stabilizing the structure or clearing the channel, until a JCP can be processed to address the long-term repair;

(4) Fill material shall not extend seaward of the mean high water line that existed immediately before the Storm;

(5) Navigational dredging shall not exceed channel depths, widths or alignment that existed immediately before the Storm;

(6) Reconstruction of non-water-dependent structures on sovereign submerged lands unless authorized in a current sovereign submerged lands lease issued by the Department is prohibited;

(7) Fill may only be placed seaward of the mean high water line to temporarily stabilize an upland structure if that structure is in danger of imminent collapse and was

located behind the primary dune line prior to the Storm. The amount of fill allowed is the minimum necessary for the stabilization of the structure;

(8) The placement of fill may only extend the mean high water line seaward of the current (post-Storm) location if the applicant provides proof that the riparian owner(s) has obtained a disclaimer under Rule 18-21.019, Florida Administrative Code, (from the Department's Division of State Lands) for the proposed project site, a memorandum from the Department's Division of State Lands acknowledging the Storm-related occurrence of avulsion for the proposed project site, or documentation from the Department that a valid erosion control line has been established at the fill site;

(9) Any fill material placed on the beach shall meet the criteria for beach-quality sand in Rule 62B-41.007(2)(j), Florida Administrative Code;

(10) The proposed measures shall not cause water quality violations outside of the mixing zone, established pursuant to Rule 62-4.244, Florida Administrative Code; and

(11) The proposed measures shall not adversely affect hardbottom or coral reef communities, seagrass communities or functional marine turtle nesting habitat that existed before the Storm and shall not contribute to erosion of adjacent properties.

b. Emergency authorizations shall expire 90 days after issuance unless a written request for an extension of the expiration date is received and granted by the Department before this Order's expiration date. Any request for extension of an emergency authorization issued under this subsection must contain a reasonable schedule for when repair, restoration, or reconstruction will commence and ultimately conclude.

c. Application fees and noticing requirements shall be waived for projects that are eligible for this emergency authorization.

**4. National Pollutant Discharge Elimination System Stormwater Construction Generic Permit**

This subsection applies to any construction activity authorized by this Order that would require coverage under the Generic Permit for the Discharge of Stormwater Associated with Large and Small Construction Activities pursuant to Rule 62-621.300(4), F.A.C. The Department waives to Rule 62-621.300(4), F.A.C., to the extent that for these construction projects, operators of the sites, and their licensed engineers and subcontractors, are authorized to make all necessary repairs to restore essential services and repair or replace (as necessary) all structures to their pre-Storm permitted or registered condition without prior notice to the Department. All best management practices must be in accordance with the guidelines and specifications of 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>. Within 30 days of commencing the work of such repair or replacement, however, the owner or operator shall submit to the Department a completed Notice of Intent to Use Generic Permit for Stormwater Discharge from Large and Small Construction Activities [Form Number 62-

621.300(4)(b)], which can be found at <https://floridadep.gov/water/stormwater/content/construction-activity-cgp>.

**5. Onsite Sewage Treatment and Disposal System Activities**

This section applies to regulatory requirements within the Emergency Area for onsite sewage treatment and disposal systems (OSTDS), commonly referred to as septic systems. Under the direction of the Department, certain regulatory services, such as permitting and inspections, are implemented by the Florida Department of Health's local county health departments (DOH-CHDs) by virtue of the Interagency Agreement, effective July 1, 2021. This Order grants relief for the following activities and standards governed under Sections 381.0065 – 381.0067, Florida Statutes, and Chapter 62-6, Florida Administrative Code:

a. Portable Restrooms, Mobile Restrooms, Mobile Shower Trailers, and Portable Holding Tanks: The Department waives during the effective period of this Order, the prohibitions of Rule 62-6.0101(7)(a), Florida Administrative Code, which forbids the use of portable restrooms, mobile restrooms, mobile shower trailers, or portable holding tanks for use with permanent structures. During this emergency period, such use is allowed in the Emergency Area as follows:

(1) In situations where the existing OSTDS is damaged or not operational due to the Storm.

(2) The use of the portable restrooms, mobile restrooms, mobile shower trailers, or portable holding tanks must not extend beyond 120 days after the end of this Order, except in the event a system construction permit has been issued to repair the damaged system within this 120-day period, the use of the portable restrooms, mobile

restrooms, mobile shower trailers, or portable holding tanks must not extend beyond the expiration date of the issued system construction permit.

(3) The use of portable holding tanks must be in accordance with the tank capacity and service requirements described in Rule 62-6.0101, Florida Administrative Code.

b. Temporary Covering of Installations: When a contractor has installed a system, which has not yet been inspected and approved for covering per Rules 62-6.003(2) and (3), Florida Administrative Code, the following criteria apply. During the effective period of this Order, a contractor may cover a system with earth prior to approval for the purposes of protecting the system from the Storm provided the system is completely uncovered for the required inspection(s) after the Storm. The contractor must, within 36 hours of covering a system, notify the DOH-CHDs in writing that the system has been covered for purposes of protecting the system from the Storm. The notification must provide the permit number, that the system will be uncovered for inspection(s), and that the system will not be placed into use until the Department grants Final Installation Approval per Rules 62-6.003(2) and (3), Florida Administrative Code.

**6. General Conditions**

a. All activities conducted under subsections C.2., C.3., C.4., and C.5. 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 C.2., C.3., C.4., and C.5. 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 Storm.

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. If activities conducted under subsection C.3. of this Order occur during the marine turtle nesting season (March 1 through October 31 in Brevard, Indian River, St. Lucie, Martin, and Broward counties, May 1 through October 31 in all other coastal counties within the state), such activities must be coordinated with the Florida Fish and Wildlife Conservation Commission's Imperiled Species Management Section to ensure that all activities comply with state and federal requirements for the protection of sea turtles, their nests, hatchlings, and nesting habitat.

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 Chapter 68A-27, Florida Administrative Code, or the federal Endangered Species Act.

f. Persons are advised that all structures that are rebuilt under subsection B.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 C.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 B.2.a. of this Order;

(2) By the date specified in the field authorization for activities that qualify under the provisions of subparagraph C.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.

**7. 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. The Department waives Rule 18-21.005, F.A.C., to the extent that:

a. Except as provided in paragraphs C.7.b., C.7.c., and C.7.d. of this Order, and subsection D.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 Storm, or was otherwise legally existing immediately prior to the Storm;

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

(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 Storm; and

(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 Storm 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 Storm, 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.

**8. Water and Wastewater Plants and Collection and Distribution Systems**

The Department waives Rule 62-620.301, F.A.C., so that:

a. Owners and operators of water and wastewater plants and collection and distribution systems, and their licensed engineers and contractors, are authorized to make all necessary repairs to restore essential services and repair or replace (as necessary) all structures, equipment, and appurtenances of the plants and systems to their pre-Storm permitted or registered condition without prior notice to the Department. Within 30 days of commencing the work of such repair or replacement, however, the owner or operator shall notify the Department in writing, describing the nature of the work, giving its location, Department Facility Identification Number, and providing the name, address, and telephone number of the representative of the owner or operator to contact concerning the work.

b. Owners and operators of underground injection control Class V Group 6 lake level control wells in existence and functioning immediately before the Storm are authorized, without prior permission by the Department, to lower the intake structure to allow a greater volume of lake water to flow down the wells when not to do so would result in immediate flooding of structures not usually inundated by such lake waters. Within 72 hours of lowering said structures, written notice shall be provided to the District Office of the Department in which the structure is located.

c. Owners and operators of drinking water plants and their licensed engineers and contractors are authorized to utilize a U.S. Environmental Protection Agency "mobile

laboratory” not previously certified in drinking water or non-potable water by the Department of Health under Rule 62-160.300, F.A.C., to perform such drinking water analyses as required in Rule 62-550.550(2), F.A.C., for purposes of determining compliance with acute public health threats like E. coli or total coliform. At a minimum, the mobile laboratory must meet requirements of the DEP Quality Assurance rules for sample collection (Rule 62-160.210, F.A.C.), sample preservation and holding times (Rule 62-160.400, F.A.C.), use of approved analytical methods (Rule 62-160.320, F.A.C.), and laboratory documentation and reporting (Rule 62-160.340, F.A.C.).

**9. 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 161.041, 161.053, 161.0535, 161.055, 373.109, 253.01, 253.03, 403.518, 373.026, 373.043, 373.109, 373.4131, 373.414, 373.418, 373.421, 381.0065, 381.0066, 403.061, 403.087, 403.704(30), 403.805, Florida Statutes, and Chapters 18-18, 18-20, 18-21, 62-4, 62B-33, and 62B-41, Florida Administrative Code, shall be suspended as follows:

a. For structures and activities authorized under paragraphs C.2.a. or C.3.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 C.2.b. of this Order, applicable lease fees will be waived for the duration described in paragraph C.9.c. of this Order.

c. Lease fees that are waived under paragraphs C.9.a. or C.9.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 C.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 C.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 C.9.a. of this Order, of the time repair, restoration, or replacement construction commenced.

## **D. 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.

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, except as provided in subsection C.8. 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. Extension of time to comply with specified deadlines**

For facilities and activities regulated by the Department in the Emergency Area, this Order extends by 30 days the time to comply with the following specified deadlines that occur between the date of issuance of this Order and the expiration of this Order:

a. The time deadlines to conduct or report periodic monitoring or any other similar monitoring that is required by a permit, lease, easement, consent of use, letter of consent, consent order, consent agreement, administrative order, or other authorization

under Chapters 161, 253, 258, 373, 376, 377, 378, 381, or 403, Florida Statutes, and rules adopted thereunder, except for monitoring required under federally-mandated air permit conditions pursuant to 40 CFR Parts 60, 61, 63, and 75;

b. The time deadlines to file an application for an extension of permit duration or renewal of an existing permit, lease, easement, consent of use, letter of consent, license, or other authorization under Chapters 161, 253, 258, 373, 376, 377, 381, or 403, Florida Statutes, and rules adopted thereunder, except for air permits issued under Title V of the Clean Air Act;

c. The time deadlines to file an application for an operation permit under Chapters 161, 253, 258, 373, 376, 377, 381, or 403, Florida Statutes, and rules adopted thereunder, except for air permits issued under Title V of the Clean Air Act;

d. The expiration date for an existing permit, lease, consent of use, license, or other authorization under Chapters 161, 253, 258, 373, 376, 377, 381, or 403, Florida Statutes, and rules adopted thereunder, except for air permits issued under Title V of the Clean Air Act; and

e. The time deadlines to obtain a permit for and commence construction of the initial phase of a system for which a conceptual permit was issued pursuant to Part IV of Chapter 373, Florida Statutes, or Sections 403.91 – 403.929, Florida Statutes, and rules adopted thereunder.

## **6. Permit Extensions During States of Emergency**

The public is advised that Section 252.363, Florida Statutes, provides for tolling and extending the expiration dates of certain permits and other authorizations following the declaration of a state of emergency. Affected permits include authorizations granted

by the Department, water management district or delegated local government, pursuant to part IV of Chapter 373, Florida Statutes, except for authorizations granted under the State 404 Program, Chapter 62-331, Florida Administrative Code.

The extension provisions of Section 252.363, Florida Statutes, do not apply to:

a. Permits that:

(1) Authorize activities that occur outside the geographic area affected by the declaration of a state of emergency;

(2) Include authorization under a programmatic or regional general permit issued by the U.S. Army Corps of Engineers;

(3) Are held by a permittee in significant non-compliance; or

(4) Are subject to a court order specifying an expiration date or buildout date that would conflict with the extensions granted in this section.

b. State-owned submerged lands authorizations under Chapters 253 or 258, Florida Statutes.

c. Formal determinations of the landward extent of wetlands and other surface waters.

d. Exemptions and verifications of exemptions from permitting criteria.

e. Permits and other authorizations issued under Chapter 161 (including JCP permits), Chapter 373 (except for permits issued under Part IV described above), Chapter 376, and Chapter 403, Florida Statutes.

To receive an extension under Section 252.363, Florida Statutes, the holder of a valid, qualifying permit must notify the authorizing agency in writing within 90 days of the expiration of a declaration of emergency, as established via a State of Florida Executive

Order. The duration of the tolled period remaining to exercise the rights under a permit shall be equal to six (6) months in addition to the duration of the declaration of emergency.

**7. Deadlines for Agency Actions**

For each of the following offices, any deadlines specified in statutes, rules, agreements, or Department orders, under which the Department is required by law to take action within a specified time period, and under which failure by the Department to timely take such action could result in any type of default binding on the Department (including the time to request additional information on permit applications), are hereby suspended and tolled for a period of 30 days, provided such deadline had not expired as of the effective date this Order:

a. Each Department office and delegated local program that sustains within its geographic boundaries any significant physical damage occurring as a direct result of the Storm. This includes Department offices located outside the impacted area that perform any of their duties in the impacted area; and

b. Any office of the Department not directly impacted by the Storm if that office has deployed staff to any District Office of the Department or delegated local program specified above, or to any water management district office in an impacted area, to assist in Storm relief efforts or to supplement the normal personnel in those impacted offices.

**8. Expiration Date**

This Order shall take effect immediately upon execution and shall expire upon expiration or rescission of EO 22-253, as modified or extended.

**9. 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, 377, 378, 381, and 403, Florida Statutes, and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

**10. 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 9th day of November 2022, in Tallahassee, Florida.

FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION



Digitally signed by  
Shawn Hamilton  
Date: 2022.11.09  
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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: 2022.11.09 08:30:15 -05'00'

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CLERK

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DATE