

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

IN RE:

EMERGENCY FINAL ORDER  
RELATING TO PERMITTING OF  
ACTIVITIES UNDER CHAPTERS 373,  
403, AND 120, FLORIDA STATUTES,  
AND CERTAIN OTHER MEASURES  
IN RESPONSE TO HURRICANE IRMA

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**AMENDED EMERGENCY ORDER NO. SWF 17-042**

Under the authority of State of Florida Executive Order No. 17-235, and Sections 120.569(2)(n), 252.32(1)(b), 252.36, 252.363, 252.46, 373.439, and and 373.119(2), Florida Statutes ("F.S."), Brian Armstrong, P.G., Executive Director of the Southwest Florida Water Management District ("District"), enters this Emergency Order ("Order") in response to the imminent or immediate danger to the public health, safety, and welfare of residents within the District resulting from the devastation wrought by Hurricane Irma. The Executive Director finds and determines:

**FINDINGS OF FACT**

1. The District is the administrative agency charged with the responsibility to conserve, protect, manage, and control the water resources within the sixteen (16) counties designated within its geographic boundaries (hereinafter referred to as the "Emergency Area"), and to administer and enforce Chapter 373, F.S., and the rules promulgated thereunder as Chapters 18-20, 18-21, 40D, and 62, Florida Administrative Code ("F.A.C."). The District also issues authorizations for use of sovereign submerged lands pursuant to Chapters 253 and 373, F.S. The District issues permits and

authorizations in accordance with the various procedures and deadlines set forth in Chapters 120, 373, and 403, F.S., and rules promulgated thereunder as Chapters 18-20, 18-21, 28, 40D, and 62, F.A.C.

2. On September 4, 2017, the Governor of Florida issued Executive Order No. 17-235 ("Executive Order 17-235") declaring a state of emergency for the entire State of Florida in anticipation of Hurricane Irma striking various parts of the State.

3. Executive Order 17-235 recognizes that special duties and responsibilities resting upon state, regional, and local agencies and other governmental bodies in responding to the emergency may require waiver or deviation from the statutes, rules, ordinances, and orders those agencies and bodies administer. Pursuant to Executive Order 17-235, each state agency may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the order or rules of that agency, if strict compliance with the provisions of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the effects of Hurricane Irma.

4. Section 373.119(2), F.S., provides that whenever the executive director, with the concurrence and advice of the governing board, finds that an emergency exists requiring immediate action to protect the public health, safety, or welfare of the citizens of the State of Florida, the Executive director may, without prior notice, issue an order reciting the existence of such an emergency and require that such action be taken as the executive director deems necessary to meet the emergency.

5. Given the magnitude and anticipated effects of Hurricane Irma within the Emergency Area, District staff are expected to spend extensive time addressing

permitting and regulatory matters resulting from the Hurricane. District emergency activities in response to Hurricane Irma have included, and will continue to include, assignment of staff to emergency operations, field authorizations, and work approval necessary to address the impacts of Hurricane Irma expected within the Emergency Area. Additional, District office operations have been slowed, and will continue to slow, by the Hurricane, and District employees may be given administrative leave depending upon the extent of the devastation wrought by the Hurricane. Consequently, District staff may not be able to effectively address all Hurricane-related impacts while at the same time adequately addressing all existing and new permit or variance application review timelines for projects not related to the Hurricane, as required by Chapters 120 and 373, F.S., and District rules.

6. A state of emergency declared by the Governor of Florida exists, requiring immediate action by the District's Executive Director, as duly authorized by Executive Order 17-235, and Sections 120.569(2)(n), 252.32(1)(b), 252.36, 252.363, 252.46, 373.439, and 373.119(2), F.S.

#### CONCLUSIONS OF LAW

7. Based on the forgoing Findings of Fact, the District's Executive Director concludes that immediate, strict compliance with the provisions listed in or promulgated under the authority of the statutes, rules, or orders set forth in Paragraph 1 herein would prevent, hinder, or delay necessary action in coping with the effects of Hurricane Irma within the Emergency Area, and that the exercise of emergency powers to suspend such statutes, rules, and orders is necessary to protect the public health, safety, and welfare.

## ORDER

8. The staff and equipment of the District are placed on emergency standby to assist any federal, state, county, municipal, or local government in managing any emergency resulting from Hurricane Irma.

9. An emergency is declared within the Emergency Area. For those entities requiring emergency action due to the effects of Hurricane Irma, permitting activities pursuant to Chapter 40D and 62, F.A.C., shall be undertaken in accordance with the procedures set forth herein to facilitate and expedite hurricane recovery activities.

### **A. ENVIRONMENTAL RESOURCE AND SURFACE WATER MANAGEMENT ACTIVITIES**

#### **Definitions**

10. For the purposes of provisions contained in this part, the term “structures” includes:

a. utility infrastructure, including water and 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, chillers, and pipelines;

b. roads, bridges, culverts, driveways, sidewalks, bike paths, and other similar public and private infrastructure;

c. public, private, and commercial habitable and non-habitable buildings, and structures ancillary to these buildings, such as garages, cabanas, storage sheds, bath houses, pools, and decks;

d. piers (including docks, boardwalks, observation platforms, boat houses, and gazebos), and pilings;

- e. shore-stabilization structures, such as seawalls, bulkheads, revetments, breakwaters, and groins;
- f. fences, signs, and billboards; and
- g. buoys, navigational aids, and other channel markers.

11. For purposes of provisions contained in this part, the term “drainage system” includes ditches, canals, ponds, swales, and other surface water conveyances; dams, weirs, dikes, and levees; and underdrains, outfalls, and associated water control structures. Any damage to structures or drainage systems authorized by the District and built to permitted design specifications may be authorized to be repaired to the design that was originally authorized by the District. Minor deviations to upgrade structures or drainage systems to current standards also are authorized.

### **Authorizations**

12. The activities set forth in Paragraphs 14 through 16 herein may be undertaken to repair, restore, or replace structures, drainage systems, land, and submerged contours to the authorized or otherwise legally existing configuration and condition, subject to the limitations in this Order. This Order does not authorize the construction of structures that did not exist prior to the effective date of this Order, unless specifically authorized below.

13. No Notice Required Landward of the Coastal Construction Control Line: The following activities may be conducted without notification to the District:

- a. Temporary and permanent repair or restoration of structures and drainage systems that are still intact (i.e., not completely destroyed or eliminated) to the condition, dimensions, and configurations that were authorized or otherwise legally existing immediately prior to Hurricane Irma, provided the repair and

restoration activities do not result in any expansion, addition, or relocation of the existing structure or systems. However, this shall not preclude the use of different construction materials consistent with current accepted permitting standards to allow upgrades to current structural and design standards.

b. The restoration (regrading, dredging, or filling) by local, regional, and state governments of surface (upland), wetland, and submerged land contours to the condition and configurations that were authorized or otherwise legally existing immediately prior to Hurricane Irma, provided the restoration does not result in any expansion or addition of land or deepening of waters beyond that which existed immediately prior to Hurricane Irma, subject to the following limits:

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

ii. In the case of dredging, all excavated material shall be deposited on uplands that are diked or otherwise sloped or designed to prevent any discharge into wetlands or other surface waters, except where such dredged material is used to restore bottom contours and shorelines, exclusive of sandy beaches fronting the Gulf of Mexico, to the conditions existing immediately prior to the Hurricane;

iii. In the case where upland or dredged material is placed in water to restore pre-existing conditions, only material from the previous uplands may be used in the restoration, and no change (from pre-existing conditions) 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);

iv. Any restored shorelines susceptible to erosion, other than areas seaward of a coastal construction control line, shall be stabilized with vegetation or rock riprap to prevent erosion. Riprap may extend no further water-ward than ten (10) feet from the pre-Hurricane mean high water line. If the pre-existing shoreline was stabilized with a seawall, the seawall may be restored within three (3) feet water-ward of the pre-Hurricane mean high water line. Debris from the Hurricane or other sources, other than natural rocks and clean concrete rubble, shall not be used to stabilize shorelines;

v. This shall not constitute authorization to fill submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund before Hurricane Irma;

vi. Removal of debris, including sunken vessels, vegetation, and structural remains that have washed into waters, wetlands, or uplands by Hurricane Irma, provided all removed debris are deposited on the uplands or otherwise deposited in accordance with other provisions of this Order;

vii. Activities authorized under this Paragraph must be commenced before the expiration of this Order or at such time as directed by an Authorized Representative listed in Paragraph 20 herein; and

viii. This Paragraph does not authorize the construction of structures that existed illegally or without authorization or did not exist prior to the emergency.

14. Field Authorizations and Approvals Required

a. For the items listed below, temporary field authorizations may be issued by District personnel following a site inspection, which will then be transmitted for approval to an Authorized Representative listed in Paragraph 20 herein:

i. Activities including the replacement or repair of structures that are no longer intact;

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

iii. Construction of temporary improvements by governmental agencies to provide temporary housing, medical, legal, sanitation, nutrition, or other facilities necessary for public, health, safety, and welfare;

iv. Trimming or alteration of mangroves; and

v. Other activities determined by District personnel as having the potential to result in only minimal adverse individual or cumulative impact on water resources and water quality.

b. Except as to Paragraph 14.a.iii. herein, temporary field authorizations and Authorized Representative approvals may be issued only to restore or repair structures and property to authorized or otherwise legally existing conditions that existed immediately prior to Hurricane Irma, or to a more environmentally compatible design than existed immediately prior to Hurricane Irma. Temporary authorizations and approvals may be requested by providing a notice to the local office of the 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. Approvals may also may be issued by Authorized Representatives without prior notice. Temporary field authorizations, if approved, may be modified or conditioned by the Authorized Representative. Written approvals shall be created and maintained by District staff with a copy provided to the property owner.

c. Other activities not described in this Order shall be regulated in accordance with Parts II and IV of Chapter 373, F.S., and the rules promulgated thereunder as Chapters 40D and 62, F.A.C.

d. Activities authorized under this Paragraph must be commenced before the expiration of this Order unless otherwise provided in a field authorization. The deadline for commencement under any field authorization issued under this Order may be extended on a showing that contractors or supplies are not available to commence the work, or if additional time is needed to obtain any required authorization from the U.S. Army Corps of Engineers.

15. General Conditions

a. All activities conducted under the provisions in this part 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, to control turbidity, and to prevent violations of state water quality standards.

b. The authorizations of the provisions in this part, except as provided in Paragraph 14.a.iii herein, shall not apply to structures and associated activities in the Emergency Areas that were not properly authorized by all applicable agencies before the passage of Hurricane Irma.

c. Environmental resource, surface water management, dredge and fill, stormwater, and coastal construction control line permits shall be required following provisions of the applicable statutes and rules for other activities not authorized herein that do not otherwise qualify as an exempt activity under the applicable statute or rule.

d. All activities shall be accomplished so as not to disturb marked marine turtle nests or known nest locations or damage existing native salt-tolerant or submerged vegetation, threatened and endangered species, or historical and archeological resources.

e. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

f. This Order only serves as an alternative emergency process under the statutes and rules implemented by the District for the duration of the Order and does not have any effect upon the requirements of other federal, state, water management districts, and local agencies. This Order therefore does not negate the need for the property owner to obtain any other required permits or authorizations of any other local, state, or federal agency, or the need to comply with all the requirements of those agencies.

g. All structures that are rebuilt shall be rebuilt in accordance with all applicable local, state, and federal building standards and requirements of the Federal Emergency Management Act (“FEMA”).

h. Owners of property shall 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 provide such documentation if requested to do so.

16. Authorization to Use Submerged Lands Owned by the State: The District has been delegated by the Board of Trustees of the Internal Improvement Trust Fund (“Board”) the authority to grant the following authorizations to use sovereignty submerged lands, that is, most lands lying water-ward of the line of mean high water or ordinary high water, in association with the repairs authorized in this part.

a. Except as provided in Paragraph 16.b. herein, a letter of consent is hereby granted for the repair, replacement, or restoration of the activities and structures located on submerged lands owned by the State subject to the provisions and limitations of the provisions in this part, for which authorization from the Board had been obtained prior to Hurricane Irma, or which were otherwise legally existing immediately prior to Hurricane Irma, provided the structures and activities will be repaired, restored, or replaced in the same location and configuration as was authorized by the Board or which otherwise legally existed immediately prior to Hurricane Irma.

b. This Order does not authorize the reconstruction or repair of unauthorized structures, which fail to qualify for the grandfathering provisions of Chapter 18-21, F.A.C.

c. The requirements for submittal of a “Reclamation of Lands Lost Due to Recent Storm Events” application are deferred for ninety (90) days after the expiration of this Order.

**B. WATER USE PERMITTING**

17. Existing Permits

a. Compliance: The Authorized Representatives set forth in Paragraph 19 herein may defer compliance with any of the terms and conditions of a water use permit for such time as is necessary to address the emergency. By way of example, the Authorized Representatives may defer annual average, maximum daily and peak month quantities, and source and use designations. The deferment may be conditioned as appropriate to protect public health, safety, and welfare, both during the emergency and for a period of time once normal operations under the permit resume.

b. Modifications: The Authorized Representatives may issue authorizations modifying any of the terms and conditions of a water use permit as necessary to address the emergency. By way of example, the Authorized Representatives may allow replacement wells or sources to be used permanently under the permit. The modification may be conditioned as appropriate to protect public health, safety, and welfare, both during the emergency and for a period of time once normal operations under the permit resume.

c. Field Approvals: For the authorizations and deferments set forth in this Paragraph, temporary field authorizations may be issued by District personnel following a site inspection that will then be transmitted to an Authorized

Representative for approval. Temporary field authorizations, if approved may be modified or conditioned by the Authorized Representative. All approvals shall be created and maintained by District staff, with a copy to the permittee.

18. Activities Requiring Permits

a. The Authorized Representative may allow activities that require a permit to be undertaken on an emergency basis as necessary to address the emergency. By way of example, commencing withdrawals that have not been previously authorized to provide necessary water for public or private use. The emergency authorization may be conditioned as appropriate to protect public health, safety, and welfare both during the emergency and once normal conditions return.

b. For the authorizations set forth in this Paragraph, temporary field authorizations may be issued by District personnel following a site inspection that will then be transmitted for approval to an Authorized Representative. Temporary field authorizations, if approved may be modified or conditioned by the Authorized Representative. All approvals shall be created and maintained by District staff, with a copy to the entity authorized to undertake the activity.

**C. GENERAL PROVISIONS**

19. Authorized Representatives: The persons authorized to represent the Executive Director and issue authorizations and permits under this Order, in addition to the Executive Director, are the Assistant Executive Director, Director of Regulation and Assistant Director of Regulation Production, Director of Operations Lands & Resource Monitoring, Director of Resource Management, and the Regulation Bureau Chiefs.

20. Applications: Submittal of an application for a water use permit authorized by this Order, or for an application for restoration, repair, and rebuilding authorized by this Order that otherwise require a permit, as well as the required application fees, are deferred until November 3, 2017.

21. Expiration Dates: The expiration of all permits pursuant to Chapters 18-20, 18-21, 40D, and 62, F.A.C., where applications for renewal or extension have not already been filed with the District within the Emergency Areas that will expire prior to November 3, 2017, are hereby extended through November 3, 2017.

22. Deferral of Existing Permit Conditions: Permit conditions relating to monitoring, reporting, and as-built plan submittals are not required to be submitted until November 3, 2017, for those entities in need of emergency relief from those requirements due to the effects on them from Hurricane Irma.

23. Notices and Deadlines: Notice of non-compliance with permits, consent orders, and all other notices requiring action by a public or private entity under Chapters 40D and 62, F.A.C., are deferred until November 3, 2017, for those entities in need of emergency relief from those requirements due to the effects on them from Hurricane Irma. All deadlines imposed by any statute or rule governing permitting are tolled for sixty (60) days from the date of the Governor's Executive Order, so that they recommence on November 3, 2017.

24. Deadlines for Agency Actions: Any deadlines specified in a statute, rule, agreement, or District Order, under which the District is required by law to take action within a specified time period, and under which failure by the District to take timely action could

result in any type of default binding on the District, are hereby suspended and tolled for a period of thirty days from the date of this Order, provided such deadline had not expired.

25. General Limitations: This Order is issued solely to address the emergency created by Hurricane Irma within the Emergency Areas for those entities affected by the Hurricane. This Order shall not be construed to authorize any activity within the jurisdiction of the District 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.

26. Other Authorizations Required: Nothing in this Order shall eliminate the necessity for obtaining any other federal, state, or local permits, or other authorizations that may be required.

27. Commencement and Completion of Authorized Activities: All activities authorized under this Order must be commenced before the expiration of this Order unless otherwise provided in a field authorization or permit. The deadline for commencement under any field authorization or permit issued under this Order may be extended on a showing that contractors or supplies are not available to commence the work or if additional time is needed to obtain any required authorization from the U.S. Army Corps of Engineers. Any permit issued pursuant to Chapters 18-20, 18-21, 40D, and 62, F.A.C., that require an Authorized Representative's authorization must be completed by the expiration date as included in the approval of the Authorized Representative. Activities not completed by that expiration date are subject to the regulatory and proprietary authorizations required prior to the execution of this Order.

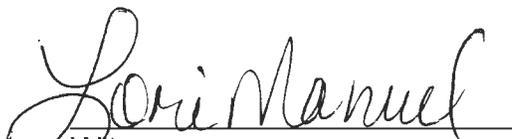
28. Expiration Date: This Order shall continue in effect in accordance with its terms until public health, safety, and welfare are restored, unless modified or extended by further order.

29. Violation of Conditions of Emergency Final Order: Failure to comply with any condition set forth in this Order shall constitute a violation of a District final order under Chapters 120, 161, 253, 258, 373, 376, and 403, F.S., and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

30. Notice of Rights: Any person, who is not a party to this Order, whose substantial interests are affected by the District's action in this Order may request an administrative hearing in accordance with Sections 120.569 and 120.57, F.S., and Chapter 28-106, F.A.C. A request for hearing that disputes the material facts on which the District's action is based must contain all elements required by Rule 28-106.201(2), F.A.C., including but not limited to: (1) an explanation of how the substantial interests of each person requesting the hearing will be affected by the District's action; (2) a statement of all disputed issues of material fact; (3) the Order number; (4) the name, address and telephone number of the person requesting the hearing and, if applicable, of the person's representative; (5) a statement of when and how the person requesting the hearing received notice of the District's action; (6) a concise statement of the ultimate facts alleged, including the specific facts warranting reversal or modification of the District's action; and (8) the relief sought, including precisely what action the requester wishes the agency to take. A request for hearing that does not dispute the material facts on which the District's action is based shall state that no material facts are in dispute, contain the same information set forth above (with the exception of item (2)), and otherwise comply

with Rule 28-106.301(2), F.A.C. A request for hearing must be filed with (received by) the Agency Clerk of the District at the District's Tampa Service Office, 7601 US Highway 301 North, Tampa, Florida 33637-6759, or by facsimile transmission to the Agency Clerk at (813) 367-9776 or (813) 367-9778, within twenty-one (21) days of receipt of this notice. Any person who is not a party to this Order whose substantial interests will be affected by any such final action of the District has the right to request a hearing in accordance with the requirements set forth above. Further pursuant to Section 120.569(n), F.S., any party adversely affected by this Order has the right to seek an injunction of this Order in circuit court or judicial review pursuant to Section 120.68, F.S., in appellate court by filing a notice of appeal under Florida Rule of Appellate Procedure 9.110, within thirty (30) days after the effective date of this Order. Failure to file a request for hearing, relief, or review within the specified time period shall constitute a waiver of any right any such person may have to request a hearing under Sections 120.569 and 120.57, F.S. Mediation pursuant to Section 120.573, F.S., to settle an administrative dispute regarding the District's action in this matter is not available prior to the filing of a request for hearing.

DONE AND ORDERED in Hernando County, Florida, on this 7 day of September, 2017.

  
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Witness

SOUTHWEST FLORIDA WATER  
MANAGEMENT DISTRICT

By:   
\_\_\_\_\_  
Brian Armstrong, Executive Director

Date: 9/7/17

Approved as to Legal Form and Content  
  
\_\_\_\_\_  
Attorney

Filed this 7 day of

September 2017.

Carla S. Marti

Deputy Agency Clerk