

**STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In re:

**EMERGENCY AUTHORIZATION FOR
COASTAL ARMORING IN VOLUSIA
COUNTY MADE NECESSARY
BY HURRICANE IAN**

OGC NO. 22-2740

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 or immediate danger to the public health, safety, and welfare of the citizens of the State of Florida posed by Hurricane Ian (hereinafter “the Storm”).

FINDINGS OF FACT

1. Hurricane Ian made landfall on Florida’s southwest coast on September 28, 2022, as a Category 4 storm. The Storm brought dangerous storm surge, rainfall, strong winds, hazardous seas, tornadic activity, and widespread damage throughout much of the State. The Storm caused substantial erosion and damage to the beach system in Volusia County. As a result, many homes and other major structures are uninhabitable and are in danger of collapse. The threat of additional storms and adverse weather conditions have the potential to increase that damage and render these properties even more vulnerable to collapse. Immediate action is warranted to protect coastal homes and structures in Volusia County, which shall constitute the area covered by this Emergency Final Order. This area shall herein be referred to as the “Emergency Area.”

2. By State of Florida Executive Order No. 22-218 as amended by Executive Order No. 22-219, the Governor declared that a state of emergency exists throughout the State of Florida based upon the serious threat to the public health, safety, and welfare posed by the Storm.

3. The Department finds that the effects of the Storm created a state of emergency posing an imminent danger to the public health, safety, welfare, and property throughout the Emergency Area. As a result of the emergency, immediate action may be necessary to protect coastal structures and homes damaged by the Storm.

4. The Department finds that an emergency authorization is required to address the need for immediate action because the normal procedures for obtaining the necessary authorizations would not result in timely action to address the emergency.

5. The Department finds that immediate, strict compliance with the provisions of the statutes, rules, or orders noted within this Order would prevent, hinder, or delay necessary action to cope with the emergency. In addition, the Department finds that the actions authorized under this Order are narrowly tailored to address the immediate need for action and procedurally appropriate under the circumstances.

CONCLUSIONS OF LAW

1. Based on the findings recited above, it is hereby concluded that the emergency caused by the Storm 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. 22-218, as amended by Executive Order No.22-219, and Sections 120.569(2)(n), 252.36, and 252.46, Florida Statutes, the Secretary or designee of the Department is authorized to issue this Order.

3. Suspension of statutes and rules as noted within this Order is required so as not to prevent, hinder, or delay necessary action in coping with the emergency.

THEREFORE, IT IS ORDERED:

A. COASTAL ARMORING FOR MAJOR STRUCTURES LOCATED IN THE EMERGENCY AREA:

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

1. Rule 62B-33.002(27), F.A.C.; defining the term “major reconstruction” as the complete or partial replacement or rebuilding to the original level of protection of a significant portion of an existing armoring structure which has failed or deteriorated. This waiver omits the reference to the original level of protection to allow for armoring structures to be built to a level other than the original level of protection.
2. Rules 62B-33.002(12)(b)1., 62B-33.002(39), and 62B-33.0051(1)(a)1., F.A.C.; requiring that a structure be “eligible” in order to authorize a permit for coastal armoring; and
3. Rule 62B-33.0051(1)(b), F.A.C.; prohibiting a permit for armoring being issued where a beach nourishment, beach restoration, sand transfer, or other project which would provide protection for the vulnerable structure is scheduled for construction within nine months.

Further, any Petition filed under the provisions of Section 120.542, F.S., but not yet acted on by the Department, for waiver of the requirements set forth in 2. above for structures located in the Emergency Area are rendered moot by the provisions of this Emergency Final Order. Those petitioners may proceed with a permit application for coastal armoring or related structure under Rule 62B-33.0051, F.A.C.

This Emergency Final Order does not waive the requirement to obtain a permit under Rule 62B-33.0051, F.A.C. The Department intends to expedite issuance of such permits in the Emergency Area upon receipt of a complete application. Permits for coastal armoring seeking relief as specified above must be applied for no later than the expiration

of this Order unless this Order is modified or extended. Permits to keep in place temporary armoring under local permits issued by Volusia County under Department Emergency Final Order No. 22-2740 must be submitted to the Department within 60 days of installation.

B. GENERAL PROVISIONS

1. General Limitations

The Department issues this Order solely to address the emergency created by the Storm. This Order shall not be construed to authorize any activity within the jurisdiction of the Department except in accordance with the express terms of this Order. Under no circumstances shall anything contained in this Order be construed to authorize the repair, replacement, or reconstruction of any type of unauthorized or illegal structure, habitable or otherwise. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

2. Suspension of Statutes and Rules

Within the Emergency Area, the requirements and effects of statutes and rules which conflict with the provisions of this Order are suspended to the extent necessary to implement this Order for the duration of this Order.

3. Other Authorizations Required

This Order only provides relief from the specific regulatory requirements addressed herein for the duration of the Order and does not provide relief from the requirements of other federal, state, water management district, or local agencies. This Order therefore does not negate the need for the property owner to obtain any other required permits or authorizations, nor from the need to comply with all the requirements of those agencies. This Order does not provide relief from any of the requirements of Chapter 471, Florida Statutes, regarding professional engineering. Activities subject to federal

consistency review that are emergency actions necessary for the repair of immediate, demonstrable threats to public health or safety are consistent with the Florida Coastal Management Program if conducted in strict compliance with this Order.

4. Expiration Date

This Order shall take effect immediately upon execution and shall expire upon expiration or rescission of EO 22-219, as modified or extended.

5. Violation of Conditions of Emergency Final Order

Failure to comply with any condition set forth in this Order shall constitute a violation of a Department Final Order under Chapters 161, 253, 258, 373, 376, and 403, Florida Statutes, and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

NOTICE OF RIGHTS

Pursuant to Section 120.569(2)(n), Florida Statutes, any party adversely affected by this Order has the right to seek an injunction of this Order in circuit court or judicial review of it under Section 120.68, Florida Statutes. Judicial review must be sought by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the Department in the Office of General Counsel by mail at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within 30 days after this Order is filed with the Clerk of the Department.

DONE AND ORDERED on this 28th day of October 2022, in Tallahassee, Florida.

FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION



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.

Margaret Ream Digitally signed by Margaret Ream
Date: 2022.10.28 16:09:44 -04'00'

CLERK

DATE