

**SOUTH FLORIDA WATER MANAGEMENT DISTRICT
3301 Gun Club Road
West Palm Beach, Florida**

IN THE MATTER OF:

SFWMD ORDER NO. 2022-065-DAO

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

**RECEIVED
DISTRICT CLERK'S OFFICE**

12:28 pm Nov 8, 2022

**SOUTH FLORIDA
WATER MANAGEMENT DISTRICT**



EMERGENCY FINAL ORDER

Under the authority of the State of Florida Executive Order No. 22-253, incorporated herein by reference, and section 120.569(2)(n), Florida Statutes, the South Florida Water Management District ("SFWMD"), enters this Order authorizing repairs, replacement, restoration, and other emergency measures to address impacts associated with Subtropical Storm Nicole ("the Storm").

FINDINGS OF FACT

1. On November 7, 2022, the Governor of Florida issued Executive Order 22-253 ("the Executive Order") declaring a state of emergency based upon the serious threat to the public health, safety, and welfare posed by the Storm. The following areas within the SFWMD's jurisdiction are included in the Executive Order: Lee, Collier, Charlotte, Orange, Osceola, Polk, Highlands, Okeechobee, Glades, Hendry, St. Lucie, Martin, Palm Beach, Broward, and Miami-Dade counties ("Emergency Areas").

2. The Storm has the potential to cause widespread damage and poses an immediate danger to the lives and property of persons throughout the Emergency Areas.

3. The Executive Order found that the special duties and responsibilities of some agencies in responding to disasters may require them to deviate from the statutes and rules they administer. Moreover, the Executive Order permits an agency, including the SFWMD, to suspend the provisions of any regulatory statute prescribing the procedures for conducting state business, or the orders or rules of the 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 emergency.

4. Should a conflict exist between this Order and any similar order issued by the Florida Department of Environmental Protection (“the Department”), then the Department’s Order shall control.

5. As a result of the Storm, immediate action by Florida's citizens and government will be necessary to repair, replace, and restore structures, equipment, surface water management systems, works, and operations damaged by the Storm.

6. The SFWMD finds that the actions authorized under this Order are narrowly tailored to address the immediate need for action and are procedurally fair under the circumstances.

ULTIMATE FACTS AND CONCLUSIONS OF LAW

7. The District issues this Order to carry out the directives in the Executive Order. Additionally, the SFWMD has authority to issue this Order under sections 120.569(2)(n), 252.46, 373.119(2), and 373.439, Florida Statutes.

8. Based on the above findings of fact, and in order to protect the public’s immediate health, safety, and welfare, it is both reasonable and appropriate that the

suspension of statutes and rules described herein is required in order not to prevent, hinder, or delay necessary action in coping with the emergency.

ORDER

THEREFORE, IT IS ORDERED that within the Emergency Areas, the following authorizations apply:

1. *Definitions*

a. For the purposes of this Order, the term “structures” includes the following when such structures are within the SFWMD’s jurisdiction: utility infrastructure, including 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, and pipelines; roads, bridges, culverts, driveways, sidewalks, bike paths, and other similar public and private infrastructure; 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; piers (including docks, boardwalks, observation platforms, boat houses, and gazebos), and pilings; shore-stabilization structures, such as seawalls, bulkheads, revetments, breakwaters, and groins; and fences, signs and billboards; and buoys, navigational aids, and other channel markers.

b. For the purposes of this Order, the term “works” includes ditches, canals, drainage systems, ponds, swales, and other surface water conveyances; wet or dry detention or retention areas, dams, weirs, dikes, and levees; and underdrains, outfalls, and associated water control structures.

2. *Environmental Resource, Dredge and Fill, SFWMD Right of Way Occupancy, and Other Surface Water Management Activities, and Coastal Construction Activities*

The following activities may be undertaken to repair, restore, or replace structures, land, works, and submerged contours to the configurations and conditions authorized or otherwise legally existing immediately prior to the Storm, subject to the limitations in this Order. This Order does not authorize the construction of structures that did not exist prior to the Storm, unless specifically authorized below.

Any damage to authorized structures or works may be repaired to the design that was originally authorized by the SFWMD. Minor deviations to upgrade structures or drainage systems to current standards also are authorized.

a. *No Notice Required*

The following activities may be conducted without notification to the SFWMD and must be commenced before the expiration of this Order or any of its Amendments:

(1) Temporary and permanent repair or restoration of structures and works to the conditions, dimensions, and configurations that were authorized by the SFWMD or otherwise legally existing immediately prior to the Storm. The repair and restoration activities shall not result in any expansion, addition, or relocation of the existing works, structures or systems. However, the use of different construction materials or minor deviations to allow upgrades to current structural and design standards are not precluded. Nothing in this paragraph shall be construed as an exemption for any party performing such repair or restoration to obtain after-the-fact permits or to modify the repair or restoration that was performed, as may be required by any federal agency.

(2) The restoration (regrading, dredging, or filling) by local, regional, and state governments of upland, wetland, works, 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, and subject to the following limits:

(a) The removal or deepening of plugs formerly separating canals from other waters is not authorized by this Order;

(b) In the case of dredging, all excavated material shall be deposited on a self-contained upland spoil site that is 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, excluding sandy beaches fronting the Gulf of Mexico or the Atlantic Ocean, to the conditions existing immediately prior to the Storm. In addition, excavated material shall not be deposited in any location that would obstruct SFWMD operations and/or maintenance;

(c) In the case where upland or dredged material is placed in water to restore pre-existing conditions, only clean material (i.e., free from debris and pollutants) 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. For example, sloping revetments cannot be replaced with vertical seawalls, and rock riprap cannot be replaced with interlocking blocks;

(d) Best management practices and devices such as hay bales, mulch, and floating turbidity screens 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 Sediment Control Inspector's Manual (DEP October 2018), <https://floridadep.gov/dear/florida-stormwater-erosion>, and the State of Florida Erosion and Sediment Control Designer and Reviewer Manual (July 2013), <https://www.fdot.gov/programmanagement/implemented/urlinspecs/flerosionsedimentmanual.shtm>. Best management practices shall also 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 the 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 (if, within an aquatic preserve, then one foot) 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 shall not constitute authorization to fill submerged lands owned by the Board of Trustees of the Internal Improvement Trust Fund.

(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 if such removal will 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 other provisions of this Order.

b. *Field Authorization Required for Environmental Resource, Dredge and Fill, SFWMD Right of Way Occupancy, and Other Surface Water Management Activities, and Coastal Construction Activities*

(1) SFWMD personnel may issue field authorizations for:

(a) the replacement of works or structures that are no longer intact;

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

(c) removal of debris, including sunken or grounded vessels, vegetation, and structural remains, that has been deposited into waters, wetlands, or uplands by the Storm, and the removal of which requires filling of wetlands or other surface waters, or requires 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 immediately prior to the Storm; and

(d) other activities SFWMD personnel determines, in writing or verbally, to have the potential to result in only minimal adverse individual or cumulative

impact on water resources, water quality, and SFWMD's property interests, including rights of way.

(2) Field authorizations may be issued only to restore works, structures and property to authorized or otherwise legally existing conditions that existed immediately prior to the Storm, or to a more environmentally compatible design than existed immediately prior to the Storm, as determined by SFWMD in writing or verbally.

(3) Field authorizations may be requested by providing a notice to the local office of the SFWMD 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. SFWMD staff may also issue field authorizations without prior notice. Field authorizations may include specific conditions for the construction, operation, and maintenance of the authorized activities. Failure to comply with the conditions of the field authorization may result in enforcement actions by SFWMD. SFWMD staff shall create and maintain written records of all field authorizations.

(4) Other activities not described above shall be regulated in accordance with Part IV of chapter 373, Florida Statutes and the rules adopted thereunder.

3. *Rights-of-Way (ROW)*

The following activities may be conducted without prior notice to the SFWMD:

a. All encroachments on SFWMD rights-of-way ("ROWS") authorized pursuant to chapter 40E-6, Florida Administrative Code, may be replaced or repaired as necessary if the replacement and restoration activities do not result in any expansion, addition, or relocation of the authorized encroachments and comply with the provisions set forth in Section 2 of this Order.

b. Local, federal, and state governments in emergency vehicles may use the SFWMD ROWs for emergency access. Utility companies and local, state, and federal governments may access the ROWs to repair structures and to restore utilities during the term of this Order without any requirement for notice to the SFWMD.

c. Use of works upon the SFWMD right of way which are not authorized by the issuance of a Right-of-Way Occupancy Permit prior to the effective date of this Order shall be prohibited unless otherwise determined to be necessary as an emergency repair or restoration for the benefit of public health, safety and welfare by the Executive Director or his/her designee. In such case, the party proposing to perform the emergency repair or restoration (Applicant) shall contact the District and request issuance of a field authorization so that the appropriate emergency actions can be performed. The Applicant shall be responsible for complying with all terms of the field authorization, including, but not limited to, securing an after-the-fact Right-of-Way Occupancy Permit, obtaining Section 408 authorization from the U.S. Army Corps of Engineers, modifying the emergency actions if required to do so by SFWMD, federal or other agency permits, and documenting the emergency actions performed.

d. This Order does not authorize placing trash or debris, including vegetation, on any SFWMD ROW.

e. In the event any such repair or restoration occurs on the SFWMD right of way pursuant to paragraph 2.a., above, documentation shall be provided upon completion to the SFWMD which includes the party that performed the work, the dates work was performed, the scope of work performed and the materials and methods employed.

4. Authorization to Use Submerged Lands Owned by the State

Pursuant to chapters 253 and 258, Florida Statutes, and Rule 62-330.075, Florida Administrative Code, the SFWMD issues proprietary authorizations to use state-owned submerged lands when the activity permitted by SFWMD occurs on land for which an environmental resource permit is issued by the SFWMD (“SLERP Authorization”).

a. Except as otherwise provided in this Order, authorization to use sovereign submerged lands is hereby granted for the repair, replacement, or restoration of the activities and structures located on submerged lands owned by the State when such activities have a previously issued SLERP Authorization. This authorization is subject to the provisions and limitations of paragraph 2. above, and is only granted for activities for which a SLERP Authorization was obtained prior to the Storm. The structures and activities authorized under this Order shall be repaired, restored, or replaced in the same location and configuration as was authorized in the SLERP Authorization.

b. This Order does not authorize the reconstruction or repair of unauthorized structures that failed to qualify for the grandfathering provisions of Chapter 18-21 of the Florida Administrative Code.

5. General Conditions

a. All activities conducted under 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, to control turbidity, to prevent violations of state water quality standards, and to protect the

functions provided by wetlands and other surface waters to fish, wildlife, and listed species.

b. The authorizations in this Order 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 the Storm.

c. 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.

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

e. This Order serves as relief for the duration of the Order from the regulatory and proprietary requirements of the SFWMD only and does not provide relief from the requirements of other federal, state, water management districts, and local agencies. This Order does not negate the need to obtain any other required permits or authorizations.

f. 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).

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 if requested to do so.

h. This Order does not provide relief from any of the requirements of chapter 471, Florida Statutes, regarding professional engineering.

6. General Limitations

The SFWMD 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 SFWMD 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.

7. Suspension of Statutes and Rules

Pursuant to the authorities in the Executive Order, the following provisions of statutes and rules are hereby suspended for the activities authorized by this Order for the duration of this Order:

a. All requirements for permits, leases, consent of uses or other authorizations, including, but not limited to, provisions in chapters 120, 161, 253, 258, 373, 376, and 403, Florida Statutes, and Rules adopted thereunder;

b. All notice requirements, including, but not limited to, notice provisions in chapters 120, 161, 253, and 373, Florida Statutes, and chapters 18-18, 18-20, 18-21, 40E-0, 40E-1, 40E-6, and 62-330, Florida Administrative Code;

c. All application fee, lease fee, and easement fee requirements, including, but not limited to, provisions in chapters 161 and 373, Florida Statutes, and chapters 18-18, 18-20, 18-21, 40E-1, 40E-2, 40E-6, and 62-330, Florida Administrative Code, provided, however, that such lease and easement fees shall be suspended only in

proportion to the percentage loss of functionality of the total area under lease or easement, and only for the duration of this Order unless otherwise provided in a field authorization issued under paragraph 2 above. The duration of the suspension of lease and easement fees under a field authorization may be extended on a showing that contractors or supplies are not available to commence the necessary repairs or replacement, or if additional time is needed to obtain any required authorization from the U.S. Army Corps of Engineers; and

8. 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 Environmental Resource Permit, Surface Water Management Permit, Dredge and Fill Permit, and /or Right-of-Way Occupancy Permit activities that require a field authorization must be completed by the expiration date of the field authorization; activities not completed by that expiration date are subject to the regulatory and proprietary authorizations required prior to the execution of this Order.

9. Expiration Date

This Order shall take effect immediately upon execution by the Executive Director of the SFWMD and shall expire on January 6, 2023, unless otherwise extended or terminated by the Executive Director or the Governing Board.

10. Violation of Conditions of Emergency Final Order

Failure to comply with any conditions set forth in this Order shall constitute a violation of chapters 120, 161, 253, 258, 373, 376, and 403 of the Florida Statutes, and enforcement proceedings may be brought in any appropriate administrative or judicial forum.

DONE AND ORDERED on this 8th day of November, 2022, in West Palm Beach, Florida.

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT

By: 

Drew Bartlett
Executive Director

NOTICE OF RIGHTS

Any party substantially affected by this Order has the right to seek judicial review under section 120.68, Florida Statutes, by filing a notice of appeal under Rule 9.110 of the Florida Rules of Appellate Procedure with the Clerk of the SFWMD at 3301 Gun Club Road, West Palm Beach, Florida 33406, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this Order is filed with the Clerk of the SFWMD.