

## SUWANNEE RIVER WATER MANAGEMENT DISTRICT

IN RE:

**EMERGENCY FINAL ORDER  
FOR DISASTER RESPONSE  
MADE NECESSARY BY  
HURRICANE IAN**

**ORDER NO. 2022-01**

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### **EMERGENCY FINAL ORDER,**

The Suwannee River Water Management District (“District”) enters this Emergency Final Order (“Order”), considering the following Findings of Fact and Conclusions of Law, in response to the imminent or immediate danger to the public health, safety, and welfare of residents within the District caused by Hurricane Ian, formerly Tropical Depression Nine and Tropical Storm Ian.

#### **FINDINGS OF FACT**

1. On September 23, 2022, Executive Order No. 22-218, was signed by the Governor declaring a state of emergency for specific Florida counties not located within this District to respond to the severity and magnitude of Tropical Depression Nine; and
2. On September 24, 2022, Executive Order No. 22-219, was signed by the Governor extending the state of emergency of Executive Order No. 22-218 for all counties in Florida to respond to the severity and magnitude of Tropical Storm Ian; and
3. The District finds that, beginning September 28, 2022, Hurricane Ian is predicted to move into the State and bring strong winds, significant rainfall, and coastal storm surge to portions of the District; and
4. The District finds that, based on the predicted storm path, Hurricane Ian poses an imminent threat to the public health, safety, welfare, and property in most counties within the District due to severe weather conditions that will persist through October 1, 2022; and
5. The District finds that an emergency authorization is necessary to address the need for immediate action since the normal procedures for obtaining necessary authorizations would not result in sufficiently timely action to address the emergency; and
6. The District finds that immediate, strict compliance with the provisions of the statutes, rules, or orders specified in 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.

#### **CONCLUSION OF LAW**

7. Based on the findings recited above, it is hereby concluded that the emergency caused by Hurricane Ian poses an immediate danger to the public health, safety, or welfare; and requires immediate action.
8. Under State of Florida Executive Order Nos. 22-218 and 22-219, Chapter 373 and sections

120.569(2)(n) and 252.36 of the Florida Statutes ("F.S."), the Executive Director of the District is duly authorized to issue this Order.

9. 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.

## **ORDER**

### **A. STATE OF EMERGENCY DECLARED; GENERAL PROVISIONS**

10. A State of Emergency is hereby declared for all counties within the jurisdiction of the District.
11. This Order shall take effect immediately upon execution; and shall expire upon expiration or rescission of Executive Order 22-218, as modified or extended.
12. 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.

### **B. DISTRICT STAFF AND EQUIPMENT PLACED ON EMERGENCY STANDBY**

13. 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 the severe weather and flooding.

### **C. DISTRICT LANDS AND FACILITIES TO BE CLOSED**

14. Concerning District-owned lands and facilities:
  - a. The District's Executive Director, Deputy Executive Directors, and Outreach and Operations Division Director are authorized to close such lands and facilities;
  - b. All special use authorizations for access and activities on such lands and facilities are suspended;
  - c. All contractor personnel and equipment shall be relocated off of such lands and facilities; and
  - d. The closures, special use authorization suspensions, and the relocation of contractor personnel and equipment provided herein shall remain in effect until it is determined by District staff that unsafe conditions no longer exist. This duration may be before or after the expiration of this Order.

### **D. ENVIRONMENTAL RESOURCE, DREDGE AND FILL, AND STORMWATER MANAGEMENT ACTIVITIES – NO NOTICE REQUIRED**

15. The District waives rule 62-330.020, Florida Administrative Code ("F.A.C."), to the extent that the following are authorized to be constructed under this Order without notification to the District:
  - a. 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 Hurricane Ian, 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.

b. 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 Hurricane Ian, 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 hurricane, 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 either be deposited on uplands that are diked or otherwise sloped or designed to prevent any discharge into wetlands or other surface waters;
- iii. All activities 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 and protect the functions provided by wetlands and other surface waters to fish, wildlife, and listed species.

c. The removal of vegetation and/or debris for the restoration of property or drainage systems 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 District rules or provisions of this Order.

#### **E. ENVIRONMENTAL RESOURCE, DREDGE AND FILL, AND STORMWATER MANAGEMENT ACTIVITIES – FIELD AND INDIVIDUAL AUTHORIZATION REQUIRED**

16. Field authorizations may be issued by the Executive Director, Deputy Executive Directors, Resource Management Division Director, or Regulatory Office Chiefs following a site inspection by District staff to restore structures and property to authorized or otherwise legally existing conditions that existed immediately prior to Hurricane Ian, 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. Specifically, field authorizations may be issued for:
  - a. Activities including the replacement of structures that are completely destroyed;
  - b. Activities on state-owned submerged lands that are not water dependent, except those structures or activities that are authorized in a valid current sovereign submerged lands lease with the Florida Department of Environmental Protection;

- 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. The removal of vegetation and/or debris for the restoration of property or drainage systems, 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 Hurricane Ian;
- e. The use of pumps to move water across drainage basins as determined to be necessary by governmental or private entities;
- f. The construction, operation and maintenance of drainage systems for prevention or relief of flood waters as deemed necessary by governmental or private entities; and
- g. Other activities determined by the District staff as having the potential to result in only minimal adverse individual or cumulative impact on water resources and water quality.

17. 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 Hurricane Ian.

18. Field authorizations may be requested by providing a notice to 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. Field authorizations also may be issued by District staff 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 District staff. 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 District in accordance with the provisions of this Order. Failure to comply with the conditions of the field authorization may result in enforcement actions by the District.

19. It is the intent of the District to act upon requests for field authorizations in a timely and expeditious manner. The District may require the submission of additional information as is necessary.

20. Other activities not described above shall be regulated in accordance with Part IV of Chapter 373, F.S., and the rules adopted thereunder.

#### **F. ENVIRONMENTAL RESOURCE, DREDGE AND FILL, AND STORMWATER MANAGEMENT ACTIVITIES – GENERAL CONDITIONS**

21. Authorized Representatives – The persons authorized to represent the Executive Director and issue authorizations and permits under this section of this Order in addition to the Executive Director are the Deputy Executive Directors, Resource Management Division Director, and Regulatory Office Chiefs.

22. 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, 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.

23. The authorizations 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 Hurricane Ian.

24. Applicable environmental resource, stormwater management, and dredge and fill 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.

25. The District issues this Order solely to address the emergency created by Hurricane Ian. 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. This Order does not convey any property rights or any rights or privileges other than those specified in this Order.

26. 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, 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, F.S., regarding professional engineering.

27. All activities authorized under this Order must be commenced before the expiration of this Order unless otherwise provided by District regulatory staff 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 18-21, 40B-2, 40B-4, and 40B-400, F.A.C., which requires 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. Any non-temporary activity will require the owner of the property to submit an application for an after-the-fact permit for the activity. The activity must be in compliance with 40B-4 and 40B-400, F.A.C., or be redesigned and reconstructed to be brought into compliance during the after-the-fact permitting process. The application for any activity that has commenced under this Order must be submitted to the District within 90 days of the expiration of this Order.

#### **G. EXTENSION OF TIME TO COMPLY WITH REGULATORY DEADLINES**

29. The time to comply with deadlines that occur between the date of issuance of this Order and the expiration of this Order set forth in compliance agreements, consent orders, administrative orders, and all other notices requiring action by a public or private entity under Chapters 40B-2, 40B-3, 40B-4, and 40B-400, F.A.C., is extended by 30 days.

30. The time deadlines to file an application for an extension of permit duration or renewal of an existing permit or other authorization under Chapter 373, F.S., and rules adopted thereunder, which occur between the date of issuance of this Order and the expiration of this Order are extended by 30 days.

31. The time deadlines to file an application for an operation permit under Chapters 373, F.S., and rules adopted thereunder, which occur between the date of issuance of this Order and the expiration of this Order are extended by 30 days.

32. 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, F.S., and rules adopted thereunder, which occur between the date of issuance of this Order and the expiration of this Order are extended by 30 days.

33. Section 252.363, F.S., 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 District pursuant to Part IV of Chapter 373, F.S. To receive an extension under Section 252.363, F.S., 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. The extension provisions of Section 252.363, F.S., do not apply to:

- a. Permits that:
  - i. Authorize activities that occur outside the geographic area affected by the declaration of a state of emergency;
  - ii. Include authorization under a programmatic or regional general permit issued by the U.S. Army Corps of Engineers;
  - iii. Are held by a permittee in significant non-compliance; or
  - iv. Are subject to a court order specifying an expiration date or buildout date that would conflict with the extensions granted in this section.
- b. Formal determinations of the landward extent of wetlands and other surface waters;
- c. Exemptions and verifications of exemptions from permitting criteria;
- d. Permits and other authorizations issued under Chapter 373 (except for permits issued under Part IV described above) and Chapter 403, F.S.

## **NOTICE OF RIGHTS**

Persons to whom this Emergency Final Order is directed, or whose substantial interests are affected, may request pursuant to Section 373.119(3), F.S., to petition for an administrative hearing in accordance with Sections 120.569 and 120.57, F.S., and Chapter 28-106, F.A.C. A request for a hearing must: (1) explain how the petitioner's or the other person's substantial interests will be affected by the District's action; (2) state all material facts disputed by the petitioner or other person, or state that there are no disputed facts; and (3) otherwise comply with Chapter 28-106, F.A.C.

A request for hearing must be filed with and received by the Agency Clerk of the District at the District's address within 21 days of receipt of this notice. Receipt is deemed to be the fifth day after the date on which this notice is deposited in the United States mail. Failure to file a request for hearing within this time period shall constitute a waiver of any right you or any other person may have to request a hearing under Sections 120.569 and 120.57, F.S.

Mediation pursuant to Section 120.573, F.S. and Rule 28.106.111, F.A.C., 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.

In accordance with Section 120.569(1), F.S., the following additional administrative or judicial review may be available: A party who is adversely affected by final agency action may seek review of the action in the appropriate District Court of Appeal pursuant to Section 120.68, F.S., by filing a Notice of Appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, within thirty (30) days after the rendering of the final action by the District.

PURSUANT TO SECTION 373.119(3), F.S., AND NOTWITHSTANDING ANY OTHER PROVISION UNDER CHAPTER 120, F.S., PERSONS TO WHOM THE EMERGENCY FINAL ORDER IS DIRECTED SHALL COMPLY THEREWITH IMMEDIATELY, AND THE TIMELY FILING OF A PETITION SHALL NOT STAY SUCH PERSON'S OBLIGATION TO MAINTAIN SUCH COMPLIANCE DURING THE PENDENCY OF ANY ADMINISTRATIVE PROCEEDING.

**DONE AND ORDERED** on this 27<sup>th</sup> day of September 2022, at the Suwannee River Water Management District, 9225 County Road 49, Live Oak, Florida in Suwannee County.



Suwannee River Water  
Management District

By:

A blue ink signature of Hugh Thomas, Executive Director, written over a horizontal line.

Hugh Thomas, Executive Director

Filed this date, pursuant to Section 120.2, F.S., with the Designated District Deputy Clerk, receipt of which is hereby acknowledged.

A blue ink signature of the District Deputy Clerk, written over a horizontal line.

Clerk

Date: September 27, 2022