

**Governing Board Meeting
July 23, 2024**

**ADDITIONS/DELETIONS
TO AGENDA**

(as of 7/16/2024 3:56 PM)

According to Section 120.525(2), Florida Statutes, additions to the published agenda will only be made for "good cause" as determined by the "person designated to preside." Based upon that authority, the Chair has determined that good cause exists to make certain changes to the agenda. These changes are being made in order to permit the Governing Board to efficiently accomplish necessary public business at this meeting and to reflect the items on the agenda that have been requested or suggested to be deleted, revised, supplemented or postponed.

Addition:

Consent Agenda

2.7 General Counsel's Report: Approval of Emergency Order No. SWF 24-020 Emergency Measures for Tsala Apopka Golf Course Control Structure

GENERAL COUNSEL'S REPORT

July 23, 2024

Consent Agenda

Approval of Emergency Order No. SWF 24-020 – Emergency Measures for Tsala Apopka Golf Course Control Structure

Sections 373.119 and 373.439, Florida Statutes, authorize the Executive Director to take actions necessary to address an emergency that poses a threat to the public health, safety, welfare, or environment which may include, among other things, waiving the procedures and formalities otherwise required to conduct public business.

On August 6, 2021, the District solicited bids for work to be completed for the Tsala Apopka Golf Course Structure Modification Project-C680 (“the Project”). The District anticipated completion of the Project by May 31, 2024. On April 24, 2024, the District prepared an Emergency Action Plan outlining steps to be taken if the Project was not completed by May 31, 2024. Due to favorable rainfall conditions, construction was allowed to continue after the anticipated completion date. However, sufficient progress toward completion has not been made and to date, the Project has not been completed. As a result, the District terminated the construction contract on July 15, 2024, and took control of the Project site.

The District’s Executive Director finds that the delay in completing the Project has threatened the safety of surrounding property, structures, stormwater management systems, works, and impoundments in the area due to potential flooding. As a result of this emergency, immediate action is necessary to protect public health, safety, and welfare. The Executive Director finds that it is appropriate for the District to employ any remedial measures necessary to safeguard life and property.

To ensure the District can complete the Project, the Executive Director issued Emergency Final Order No. SWF 24-020 on July 15, 2024. The Emergency Order suspends the effect of certain statutes, rules, or orders to the extent necessary to safeguard life and property. This includes specific provisions related to competitive procurement. The Emergency Order allows the District to employ any remedial measures as needed, including taking full control of the Project site and performing such activities as are necessary to complete the Project. If approved, the Emergency Order will remain in effect until September 13, 2024.

Staff Recommendation:

See Exhibit

1. Approve Emergency Order No. SWF 24-020.

Presenter: Christopher A. Tumminia, General Counsel, Office of General Counsel

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

IN RE:
EMERGENCY MEASURES FOR
TSALA APOPKA GOLF COURSE CONTROL
STRUCTURE MODIFICATION PROJECT (C680)

EMERGENCY ORDER NO. SWF 24-020

The Southwest Florida Water Management District (District) enters this Emergency Order (Order), including Findings of Fact and Conclusions of Law, in response to site conditions and anticipated rainfall near the Tsala Apopka Golf Course Control Structure in Citrus County, Florida, that pose an immediate danger to the public health, safety, and welfare.

FINDINGS OF FACT

1. The District is an agency charged with the responsibility to conserve, protect, manage, and control the water resources within all or part of sixteen (16) counties designated in its geographic boundaries, including Citrus County (hereinafter referred to as the Emergency Area), and to administer and enforce Chapter 373, Florida Statutes, and the rules adopted thereunder in the Florida Administrative Code (F.A.C.).

2. On August 6, 2021, the District advertised a Request for Bids (RFB 2115) for the Tsala Apopka Golf Course Structure Modification Project-C680 (Project) in Citrus County. The Project involves: (1) modifying an existing operable control structure by replacing four (4) 4-foot-wide steel drop gates with two (2) 8-foot-wide lift gates that reach the channel bottom; (2) gate support structure; (3) metallization of the existing structure; (4) channel stabilization via rip-rap and concrete slope pavement; (5) electrical

modifications; (6) restoration sodding; (7) survey layout and as-built; (8) earthwork; (9) dewatering; (10) retaining wall construction; (11) catwalk with handrail; and (12) other incidental activities as described in RFB 2115.

3. On August 22, 2022, the District issued a Notice to Proceed with construction, which required substantial completion by May 1, 2024, and final completion by May 31, 2024 (Final Completion Deadline).

4. On April 24, 2024, the District prepared an Emergency Action Plan outlining steps to be taken if the Project was not completed by the Final Completion Deadline.

5. On May 31, 2024, the District determined that current conditions were suitable to allow construction activities to extend beyond the Final Completion Deadline. However, sufficient progress was not made in accomplishing critical tasks, and on July 15, 2024, the District terminated the construction contract.

6. The Executive Director finds that the delay in completing the Project has threatened the safety of surrounding property, structures, stormwater management systems, works, and impoundments in the Emergency Area due to potential flooding. As a result of the emergency, immediate action is necessary to protect public health, safety, and welfare. The Executive Director finds that it is appropriate for the District to employ any remedial measures necessary to safeguard life and property.

CONCLUSIONS OF LAW

7. Based on the Findings of Fact described herein, it is hereby concluded that the emergency caused by delays in completing the Project poses an immediate danger to the public health, safety, and welfare requiring immediate action.

8. Pursuant to Sections 120.569(2)(n) and 373.119(2), F.S., the District's Executive Director, or designee, is authorized to issue this Order.

9. The actions required to protect the public health, safety, and welfare described in this Order are appropriate pursuant to section 373.439(2), F.S., and are required so as not to prevent, hinder, or delay any action necessary to meet the emergency.

10. The District's immunity from liability for any damages that might result from the activities authorized by this Order, as provided for by Section 373.443(4), F.S., shall not be diminished by the terms of this Order or any activities undertaken pursuant to this Order.

THEREFORE, it is hereby **ORDERED** that the following apply:

11. **Procurement**

To ensure the District can provide for the completion of the Project, the Executive Director hereby suspends, to the extent necessary, the effect of any statute, rule, or order that provides for the District's ability to procure necessary supplies, commodities, services, temporary premises, and other resources, to include, without limiting the generality of the foregoing, any and all statutes, rules, and orders that affect budgeting, leasing, printing, purchasing, travel, the conditions of employment, and the compensation of employees.

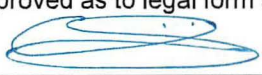
12. **Conflicting Requirements**

The requirements and effects of statutes, rules, agreements, policies, procedures, or District orders that conflict with the provisions of this Emergency Order are suspended to the extent necessary to implement this Emergency Order. The District shall immediately employ any remedial means necessary to safeguard life and property, including, but not limited to, taking full control of the Project site and performing such activities as are necessary to complete the Project.

13. **Limitations**

The District issues this Emergency Order solely to address the emergency described herein. This Emergency Order shall not be construed to authorize any activity within the jurisdiction of the District except in accordance with the express terms of this Emergency Order. Nothing in this Emergency Order, or any action taken in accordance with this Emergency Order, shall be construed as District approval of work performed on the Project before the effective date of this Emergency Order.

DONE AND ORDERED in Hernando County, Florida, on July 15, 2024.

Approved as to legal form and content

Chris Tumminia, General Counsel

**SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT**

By: 
Brian J. Armstrong, Executive Director

Filed this 15th day of

July 2024.


Deputy Agency Clerk

[SEAL]



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 District at 7601 U.S. Highway 301 North, Tampa, Florida 33637-6759, 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 District.