

GENERAL COUNSEL'S REPORT
May 19, 2020

Consent Agenda

Administrative, Enforcement, and Litigation Activities that Require Governing Board Approval

Governing Board Concurrence – Emergency Order No. SWF 20-020 – Emergency Measures Made Necessary by COVID-19

On April 2, 2020, the District's Executive Director issued Emergency Order No. SWF 20-014 (Emergency Order) in accordance with the Governor's Executive Order No. 20-52, which declared a state of emergency throughout Florida due to the Novel Coronavirus Disease 2019 (COVID-19). The District's Emergency Order provided for the following narrowly tailored measures to assist the immediate need for action:

- Extension of permitting deadlines.
- Temporary closure of public buildings and facilities.
- Provision for conducting public meetings exclusively through audio/visual technology.

On April 28, 2020, the District's Governing Board concurred with the Executive Director's findings and approved the Emergency Order. Subsequently, the Governor issued Executive Order No. 20-114 and extended the declaration of emergency through July 7, 2020.

The extended declaration of emergency and Section 373.119, Florida Statutes, authorize local agencies and governments to take actions necessary to meet the emergency. Such actions may include, among others, waiving the procedures and formalities otherwise required to perform public work as necessary to ensure the health, safety, and welfare of the community. The District's Executive Director and staff have found that a limited extension of the District's Emergency Order is necessary to meet the ongoing public health emergency. As a result, the Executive Director issued Emergency Order No. SWF 20-020 on May 8, 2020 to extend the provisions of the initial Emergency Order through May 31, 2020.

Section 373.119 also requires the District's Governing Board to concur with the findings and conclusions in Emergency Order No. SWF 20-020. If approved, Emergency Order No. SWF 20-020 would remain in effect until May 31, 2020, unless terminated or extended by further order.

STAFF RECOMMENDATION:

See Exhibit

- (1) Approve Emergency Order No. SWF 20-020 and concur with the Executive Director's determinations regarding the state of emergency and the actions necessary to meet the emergency.

Presenter: Christopher A. Tumminia, Deputy General Counsel

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

IN RE:

EMERGENCY ORDER DUE TO
THE EFFECTS OF COVID-19

AMENDED AND RESTATED EMERGENCY ORDER NO. SWF 20-020

Under the authority of Sections 120.569(2)(n), 252.36, 252.46, and 373.119(2), Florida Statutes (F.S.), and upon consideration of State of Florida Executive Order Nos. 20-52 and 20-114, the Florida Department of Environmental Protection's Amended and Restated Emergency Final Order No. 20-0239, and the following findings of fact, the Southwest Florida Water Management District (District) enters this Amended and Restated Emergency 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 residing within the District caused by the Novel Coronavirus Disease 2019 (COVID-19). This Amended and Restated Emergency Order extends the provisions of Emergency Order No. SWF 20-014, entered on April 2, 2020, upon the following findings and determinations:

FINDINGS OF FACT

1. The District is a public corporation charged with the responsibility to conserve, protect, manage, and control the water resources within the 16 counties designated within its geographic boundaries (Emergency Area), and to administer and enforce Chapter 373, F.S. The District issues authorizations for use of sovereign submerged lands pursuant to Chapters 253 and 373, F.S., and permits in accordance with the various procedures and deadlines set forth in Chapters 120, 373, and 403, F.S.,

and rules promulgated thereunder in Chapters 18-20, 18-21, 28, 40D, and 62-330, Florida Administrative Code.

2. COVID-19 is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza.

3. In late 2019, a new and significant outbreak of COVID-19 emerged in China. Since the initial outbreak, COVID-19 has now been detected in more than 100 locations internationally, including the United States. As a result, the World Health Organization has declared COVID-19 a pandemic.

4. Positive cases of COVID-19 have been detected in the state of Florida. On March 1, 2020, pursuant to the Governor's Executive Order No. 20-51, the State of Florida's Surgeon General and State Health Officer declared a Public Health Emergency exists in the State of Florida as a result of COVID-19. The Governor also directed the Director of the Division of Emergency Management to activate the State Emergency Operations Center to Level 1 to provide a coordinated response to the COVID-19 emergency.

5. By State of Florida Executive Order Nos. 20-52 and 20-114 (Executive Orders), the Governor declared that a state of emergency exists throughout the state of Florida. Subsequently, the Florida Department of Environmental Protection issued Amended and Restated Emergency Final Order No. 20-0239 providing certain measures to be taken to implement the Governor's Executive Order and meet the exigencies of the public health emergency.

6. The District's Executive Director finds that the effects of COVID-19 create an ongoing state of emergency threatening the public health, safety, welfare, and property throughout the Emergency Area. As a result of the emergency, immediate action is necessary.

7. In accordance with recommendations from the Centers for Disease Control and Prevention (CDC) and other health organizations, many employees of companies and government entities are working remotely to minimize the risk of spreading COVID-19. On March 16, 2020, President Trump and the CDC issued the 15 days to Slow the Spread guidance advising individuals to adopt far reaching social distancing measures such as working from home and avoiding gatherings of more than 10 people.

8. COVID-19 may cause disruption in supply chains and the labor force, thereby impacting the ability of many regulated entities to meet certain regulatory deadlines. Therefore, the District's Executive Director finds that it is appropriate to extend certain regulatory deadlines by 30 days to accommodate disruptions. This Order does not provide relief from any other regulatory requirements, including those of other federal, state, or local agencies. This Order likewise does not provide relief from the District's compliance and enforcement activities. The District will continue to carry out all inspections, testing, data and file reviews, and other compliance verification activities to ensure full compliance with regulatory requirements. In the event of noncompliance with any such requirements, the District will continue to fully execute its compliance and enforcement duties to the extent required by law.

9. The District's Executive Director finds that in-person public meetings and hearings pose a potential risk and should not be held during the term of this Order.

Instead, public meetings and hearings held by electronic means is a safe method to encourage public engagement while protecting public health.

10. 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.

11. The District's Executive Director 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 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.

CONCLUSIONS OF LAW

12. Based on the findings recited above, it is hereby concluded that the emergency caused by COVID-19 poses an immediate danger to the public health, safety, or welfare and requires an immediate order of the District.

13. This Order is issued to carry out the directives in the Executive Orders, which were issued under the authority of article IV, section 1(a) of the Florida Constitution, and in concert with the Florida Department of Environmental Protection Amended and Restated Emergency Final Order No. 20-0239. Additionally, under the Executive Orders and Sections 120.569(2)(n), 252.36, 252.46, and 373.119(2), F.S., the District's Executive Director is authorized to issue this Order.

14. 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. However, this Order is limited to the items specified below and does not provide relief from the District's compliance and enforcement activities. The District will continue to carry out all inspections, testing, data and file reviews, and other compliance verification activities to ensure full compliance with regulatory requirements. In the event of noncompliance with any such requirements, the District will continue to fully execute its compliance and enforcement duties to the extent required by law.

THEREFORE, it is hereby ORDERED:

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

15. **Extension of Time to Comply with Specified Deadlines.** For facilities and activities regulated by the District within the Emergency Area, this Order extends by 30 days the time to comply with the following specified deadlines that occur between the date of issuance of this Order and the expiration of this Order (a.-f. below). However, as specified above, this Order does not provide relief from any other regulatory requirements including those of other federal, state, or local agencies. This Order likewise does not provide relief from the District's compliance and enforcement activities. The District will continue to carry out all inspections, testing, data and file reviews, and other compliance verification activities to ensure full compliance with regulatory requirements. In the event of noncompliance with any such requirements, the District will continue to fully execute its compliance and enforcement duties to the extent required by law.

a. The time deadlines to conduct or report periodic monitoring or any other similar monitoring that is required by a permit, lease, easement, consent of use, letter of consent, consent order, consent agreement, administrative order, or other authorization under Chapters 161, 253, 258, 373, 376, or 403, F.S., and rules adopted thereunder.

b. The time deadlines to file an application for an extension of permit duration or renewal of an existing permit, lease, easement, consent of use, letter of consent, or other authorization under Chapters 161, 253, 258, 373, 376, or 403, F.S., and rules adopted thereunder.

c. The time deadlines to file an application for an operation permit under Chapters 161, 253, 258, 373, 376 or 403, F.S, and rules adopted thereunder.

d. The expiration date for an existing permit, lease, consent of use, or other authorization under Chapters 161, 253, 258, 373, 376 or 403, F.S., and rules adopted thereunder.

e. 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.

16. **Public Meetings and Hearings.** The District shall conduct all public meetings or hearings during the term of this Order only by electronic means, including, but not limited to, the use of webinar or telephone to encourage public engagement while protecting public health. The District shall not hold any in-person public meetings or hearings during the term of this Order. This Order waives the policy and procedural requirements in District Policy 110-5, entitled Conduct of Board Meetings, as necessary. The District will adopt interim

policies to continue to provide remote public access to meetings while continuing to fulfill the duties of the District.

17. **Expiration Date.** This Order shall take effect immediately upon execution by the Executive Director or his designee, and shall expire on May 31, 2020, unless modified or extended by further order.

DONE AND ORDERED in Hillsborough County, Florida, on this 8th day of May, 2020.

**SOUTHWEST FLORIDA WATER
MANAGEMENT DISTRICT**

By: 
Brian Armstrong, Executive Director

Filed this 11th day of May, 2020.


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 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.