

Practice Update

# Hurricane Irma: To Facilitate Storm Recovery, Governor Scott & FDEP Issue Statewide Orders, Extending Development Approvals & Suspending Range of State Environmental Provisions

September 13, 2017

This Akerman alert provides current information on post-hurricane recovery issues. Hurricane Irma made landfall in Florida on September 9, 2017, one of the strongest hurricanes on record. More than one-quarter of the state's population was ordered or asked to evacuate before the storm. It will take time to assess and respond to the damage caused. Our thoughts are with those affected.

To facilitate storm response, recovery, and reconstruction efforts, before Hurricane Irma's landfall, Governor Rick Scott and the Florida Department of Environmental Protection (FDEP) issued twin emergency orders on September 4 and 5, 2017, which cover the entire state and have the effect of extending development approvals and suspending or granting exemptions and extensions as to a broad range of state environmental permitting and regulatory requirements. These measures will be important as the state's residents, businesses, and the public sector assess and respond to damage caused by Hurricane Irma.

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## **Governor's Executive Order Effective until November 3, 2017**

On September 4, Governor Scott issued Executive Order 17-235, declaring a state of emergency throughout the State of Florida due to the threats posed by Hurricane Irma. The duration of the state of emergency is 60 days - until November 3, 2017 - unless extended or curtailed by another executive order. Based on previous states of emergency and given the magnitude of disruption and damage from Hurricane Irma, one or more extensions of the state of emergency is likely. The Executive Order may be accessed by clicking this [link](#).

### **Extension of Development Approvals & Certain Permits Under Florida Law**

Under Florida Statutes, certain permits and authorizations are eligible for extension when the Governor declares a state of emergency, effective within the area covered by the emergency declaration. With some exceptions, the extension applies to expiration of local government-issued development orders (such as rezonings, concurrency approvals, and proportionate share agreements with phasing or expiration dates), building permits, Development of Regional Impact development orders, and Environmental Resource Permits (ERP) issued by FDEP or water management districts pursuant to Chapter 373, Florida Statutes. These extensions do not apply to federal permits.

By statute, issuance of the state of emergency declaration tolls the period remaining to exercise the rights under these permits or other authorizations for the duration of the state of emergency and extends the deadline for the permit or authorization for an additional 6 months beyond the tolled period. Within 90 days after the termination of the emergency declaration, the holder of the permit or authorization must provide written notice to the issuing authority of the intent to exercise the tolling and extension granted. The notice must reference

Section 252.363, Florida Statutes, identify the specific permit or other authorization qualifying for extension, and identify the particular state of emergency under which the extension is being sought. Please note that unless the state of emergency for Hurricane Irma is extended or curtailed by another executive order, the deadline to file the required notice to the issuing authorities is February 1, 2018.

There are currently several other states of emergency in effect within the state under other executive orders. While multiple extensions apply to some projects and each state of emergency provides a separate 6-month extension, overlapping tolling periods cannot be double-counted under these provisions. Care must therefore be taken in calculating the total amount of time available under the various development approval extensions and to ensure the notice deadlines are met for each applicable extension. In addition, it is not always clear whether a permit is eligible for an extension and how to calculate the extension and tolling periods. If practicable, clients should therefore try to get an acknowledgement from the permitting staff agreeing to the extension and new phasing and expiration dates. If that is not practicable, it is important to keep records showing that the notice was given, when it was given, and that it was otherwise in compliance with statutory requirements.

The Executive Order also granted the FDEP Secretary, among other agency heads, authorization to abrogate time and notice requirements and deadlines for final action on applications for permits, licenses, and other approvals that have not expired as of the date of the Executive Order. Action on these extensions is further detailed below.

**FDEP Emergency Final Order Effective through  
October 4, 2017**

On September 5, FDEP issued an Emergency Final Order (“Emergency Authorization for Repairs, Replacements, Restoration, and Certain Other Measures Made Necessary by Hurricane Irma”), referred to in this alert as the EFO, to facilitate storm response and reconstruction efforts. The EFO may be accessed by clicking this [link](#). FDEP also amended the EFO on September 10, 2017, and additional amendments to the EFO are expected in the future. The EFO expires on October 4, 2017, unless modified or extended. The EFO suspends or extends timeframes under many state environmental statutes and rules, suspending or waiving notification requirements required before construction or other work begins. Certain state fees are also suspended. Federal requirements are generally not exempted. FDEP recommends that property owners maintain documentation of conditions before work is performed under the EFO.

Key provisions of the EFO are highlighted below. A review of the entire EFO is recommended for a complete understanding of authorized or qualifying activities and conditions of approval.

- Permit extensions of time. The EFO grants a 30-day extension of time relating to qualifying permits, leases, consent of use or other authorizations for parties to comply with certain deadlines that occur between the issuance and expiration of the EFO regarding (i) otherwise required periodic or similar monitoring, (ii) permit renewal or expiration, or (iii) deadlines to file applications for operation permits, with certain exceptions. This extension of time applies to qualifying permits, leases, consent of use or other authorization pursuant to Chapters 161, 253, 373, 376 or 403, Florida Statutes, but does not serve as a limitation on the statutory tolling described above. The extension of time is also limited to FDEP programs or FDEP-delegated programs regulated under those statutes.
- Expedited asbestos cleanup. Waives 10-day advance notification requirement before

renovation or demolition work in which asbestos is disturbed, so long as notice is provided to FDEP within one (1) business day after work begins. Proper handling and disposal is required; burning is prohibited.

- Solid waste management flexibility. Hurricanes generate significant amounts of waste material. The EFO authorizes field authorizations for Disaster Debris Management Sites providing for the temporary storage and chipping, grinding, or burning of hurricane-generated debris and addresses conditions under which hurricane-related debris or ash may be stored, disposed of, or incinerated.
- Hazardous waste generators. Issues a blanket, 30-day time extension for hazardous waste generators to store hazardous waste on site, running from the expiration date of the EFO.
- Storage tank systems. Enables owners and operators of regulated storage tank systems to make necessary repairs to restore essential services and repair or replace systems to pre-hurricane conditions without prior notice to FDEP, provided that notification is made within 30 days after work begins. Addresses the handling and disposal of petroleum contact water.
- Activities Seaward of the Coastal Construction Control Line (CCCL) activities. The EFO makes separate provision for activities seaward of the CCCL. Rule 62B-33.004 already provides for permit exemptions for certain activities. FDEP has issued a public information handout listing such exemptions. The handout may be accessed under the “hot topics” section of [www.dep.state.fl.us/beaches](http://www.dep.state.fl.us/beaches). Emergency permits may be issued for non-exempt activities undertaken seaward of the CCCL. However, new permanent structures and beach scraping are not authorized under the EFO. Activities that may be undertaken without permits before October 4, 2017 by local governments and utility companies include: removal of hurricane-generated debris,

repair of public facilities such as roads and beach access, return of sand to the beach and dune system deposited upland. Local governments may issue permits in lieu of FDEP permits to private property owners for temporary or remedial activities to secure structures or remove safety hazards and prevent damage or collapse of foundations, temporary armoring such as wooden retaining walls, sandbags or similar structures, repair or replacement of minor ancillary structures such as stairs and landings, permanent repair of foundations that have not been substantially damaged, repair or replacement of caps and anchoring systems for seawalls, restoration of a damaged dune system and return of sand to the beach deposited upland by the hurricane. The EFO does not authorize permanent repairs to foundations that have been substantially altered or a number of other activities and should be reviewed carefully before undertaking any repairs or restoration.

- No-notice ERP, dredge & fill, and surface water management permitting (non-CCCL). Under a no-notice provision, the EFO authorizes (i) temporary and permanent repair or restoration of water dependent structures that are not completely destroyed and (ii) agency restoration (regrading, dredging, or filling) of upland surfaces, wetlands, and submerged land contours, provided there is no expansion or relocation of existing structures or new unpermitted conditions. No-notice work must be completed by October 4, 2018. Field authorizations may be issued for replacement of completely destroyed structures, restoration of uplands and wetlands by non-governmental parties, mangrove trimming threatening property or interfering with navigation, and removal of debris, including sunken or grounded vessels and structural remains. The EFO also allows FDEP the ability to approve other activities with minimal impacts.
- NPDES Stormwater construction permitting. Construction sites for which NPDES Stormwater

Construction Generic Permit coverage is required may make necessary repairs to restore essential services and perform repair or replacement work to pre-hurricane conditions, provided that a completed Notice of Intent (NOI) is submitted within 30 days after work commences.

- Water and Wastewater Plants and Collection and Distribution Systems. Owners and operators are authorized to make all necessary repairs to restore essential services and repair or replace all structures and equipment to pre-hurricane conditions without prior notice to FDEP but must give notice within 30 days.
- Illegal structures & protected species. The EFO does not authorize the repair, replacement, or reconstruction of unauthorized or illegal structures and does not affect state or federal laws protecting endangered or threatened species.
- Special conditions. Many of the exemptions or emergency authorizations discussed in the EFO include special conditions that must be implemented in order to qualify under the terms of the EFO.

Akerman's real estate, land use, and environmental teams stand ready to assist clients in their response and recovery efforts. Akerman plans to issue further updates on key legal and regulatory issues implicated by the storm.

This information is intended to inform clients and friends about legal developments, including recent decisions of various courts and administrative bodies. This should not be construed as legal advice or a legal opinion, and readers should not act upon the information contained in this email without seeking the advice of legal counsel.