

CHAPTER 10: EMERGENCY PERMITTING PROCESS

This Chapter describes the process by which a person may apply for a permit to undertake shoreline protection measures in Walton County. The installation of a permanent erosion control structure or construction of any type of shoreline protection seaward of the State's CCCL requires a permit from FDEP's Bureau of Beaches and Coastal Systems. Shoreline protection measures may be initiated only after receipt of the following: a) a CCCL permit issued by the FDEP; b) an emergency permit issued by the FDEP; or c) an emergency permit issued by Walton County. **This HCP applies primarily to those shoreline protection measures initiated under an emergency permit issued by Walton County following issuance of an ITP.** However, the HCP also provides a mechanism through which incidental take coverage can be obtained for installation/retention of permanent armoring structures that replace "temporary" measures initiated after Hurricane Dennis or permitted by the FDEP in the future through its standard (non-emergency) CCCL permitting process (see Class 3 and Class 5 structures, respectively in Chapter 1, Distinctions Among Past, Present, and Future Shoreline Protection Actions).

The following process shall guide Walton County's issuance of emergency permits for future temporary shoreline protection activities following the passage of a major storm event.

Declaration of Emergency

The County will not issue any emergency shoreline protection permits (emergency permits) unless a storm that has been declared an emergency impacts the Plan Area and the Coastal Engineer determines that beach erosion has occurred as a result of the declared emergency. A Declaration of Local Emergency can be made by the Board of County Commissioners of Walton County or by the State of Florida. If the State of Florida issues a declaration of emergency that includes Walton County in its scope, a local declaration is not required.

When an emergency or disaster has occurred or is imminent, the Emergency Management Director or his/her designee may activate the County's Comprehensive Emergency Management Plan (CEMP). Activation of the CEMP may be followed by a Declaration of Local Emergency, as authorized under Chapter 252.38, FS. In such case, the Emergency Management Director or his/her designee will draft a resolution for the approval of the Board of County Commissioners. The resolution will describe the basis and conditions for declaring an emergency.

A Declaration of Local Emergency triggers communication and coordination between the Emergency Management Director and various County divisions. The Emergency Operations Center is opened and all emergency personnel must report in. Consequently, an emergency is declared only when truly hazardous conditions threaten. However, the

DRAFT 4

declaration must be made sufficiently in advance of an approaching storm to allow for adequate evacuation and emergency preparations, if necessary.

The County shall notify the FDEP in writing by the most expeditious means available whenever it has declared an emergency pursuant to this HCP and the issued ITP. Notification shall include documentation from the Board of County Commissioners authorizing the Declaration of Local Emergency and shall provide the date and details of the storm event that created the emergency. *Exception: If the State of Florida issues a declaration of emergency, a local declaration is not required.*

Initiation of Emergency Permitting Process

Following the passage of a coastal storm for which a State or Declaration of Local Emergency has been issued, several different scenarios may initiate an evaluation to determine if emergency shoreline protection measures are warranted.

- An oceanfront property owner may contact the County and request a determination as to whether or not his/her structure qualifies for emergency protection. The County’s Coastal Engineer will then perform a shoreline damage assessment of the affected property;
- The County may initiate a post-storm shoreline damage assessment and make a determination as to which structures warrant emergency protection based on that assessment; or
- The State of Florida may initiate a post-storm shoreline damage assessment and determine that a need for emergency protection exists for particular structures.

Regardless of the scenario used to ascertain that shoreline protection is warranted, emergency measures shall not be authorized unless an affected property owner makes a formal request to the County. This request may initially be verbal but must be followed in writing within 15 business days of the storm event or within 15 days of returning home following a mandatory evacuation, whichever is longer. Upon receipt of a formal request from an affected property owner, the County’s Coastal Engineer shall visit the site and recommend the most appropriate type of temporary shoreline protection based on site-specific conditions. The County shall follow FDEP Guidelines to Local Governments for Emergency Temporary Coastal Armoring Seaward of the Coastal Construction Control Line (July 2007) when issuing emergency permits (Appendix A).

Determination of Eligibility and Vulnerability

Part I, Chapter 161, Florida FS, and Chapter 62B-33, FAC, set forth the rules and regulations governing the issuance of permits for shoreline protection activities along Florida’s coastline. A threatened structure must be both “eligible” and “vulnerable”, as defined by Chapter 62B-33, FAC, before the property owner can receive a permit to install a permanent shoreline armoring structure. However, temporary emergency shoreline protection may be initiated at the local level, with a determination of eligibility

DRAFT 4

and vulnerability made later by the FDEP upon application for a CCCL permit to retrofit and retain the temporary structure as permanent or to construct alternative protection. Properties with shoreline protection installed under the County's emergency permitting authority that do not meet the FDEP criteria for eligibility or vulnerability may be required to have the protection structures removed, as determined by the FDEP, in accordance with the provisions of this HCP and the terms and conditions of the ITP.

When inspecting a property for which an emergency permit application has been made, the Coastal Engineer needs only make a determination as to: a) whether erosion has resulted from the declared emergency; b) whether the erosion is sufficient to warrant temporary protection; and c) if applicable, the type(s) of temporary protection that would be appropriate for site-specific conditions. Typically, emergency protection is warranted if the structural foundation is exposed or undermined or if the seaward-most edge of the foundation is close enough to the edge of the dune escarpment that erosion from a subsequent 15-year return interval storm would undermine the structure. However, regardless of vulnerability, Walton County will not issue an emergency permit if existing beach conditions did not result from the most recently declared emergency. If a property owner believes that his/her property is in imminent danger and is not eligible for a local emergency permit, he/she can apply to the FDEP for an emergency or standard permit through the CCCL permitting process.

Emergency Shoreline Protection Options

The Coastal Engineer will recommend the most appropriate protective measure(s) for the site, with the goal of providing adequate temporary protection for the vulnerable structure while minimizing impacts to sea turtle nesting habitat, viable beach mouse habitat, and the coastal beach/dune system in general. Because each site is unique, it is not possible to establish a matrix to identify the appropriate protection measure(s) for all possible scenarios. The Coastal Engineer will use his/her best professional judgment when recommending the most appropriate shoreline protection measure for a specific site. This assessment will be based upon careful consideration of factors such as:

- Potential for physical damage to the structure because of erosion;
- Extent of storm damage to the beach/dune system;
- Distance of the structure from the dune escarpment;
- Pre-storm conditions at the site (i.e., critically eroding, eroding, accreting, etc.);
- Potential consequences to coastal processes and downdrift properties potentially resulting from different shoreline protection options;
- Time of year when the emergency occurs (e.g., during or outside of the sea turtle nesting season, likelihood for additional storm activity, etc.);
- Presence/absence of sea turtle nesting habitat, marked nests, and/or viable beach mouse habitat; and
- Construction schedules for permitted beach nourishment projects at the site.

Based on the criteria listed above, one or a combination of the following protective measures will be recommended:

DRAFT 4

- Placing beach compatible sand from upland sources to restore the dune;
- Creating a temporary barrier seaward of the structure using sand bags (<100 lbs);
- Shoring up (reinforcing foundations); and/or
- Installing temporary retaining walls, cantilever sheetpile walls (without concrete caps, tie backs, or other reinforcement), or similar structures seaward of the vulnerable structure.

Sand-filled geotextile containers or similar structures proposed as the core of a restored dune feature shall not be used as temporary protection under the County's emergency permitting authority. Effective July 1, 2007, only the FDEP may authorize such structures, as set forth in Chapter 161.085(9), FS.

“Soft” solutions, such as the placement of beach-compatible sand seaward of the structure and sand bags, will be recommended whenever possible. “Hard” solutions, such as wooden retaining walls, cantilever sheetpile walls and similar structures will only be recommended when soft solutions cannot reasonably be expected to provide adequate protection for a vulnerable structure. Ultimately, however, property owners can implement whatever protective measures they feel are warranted, provided those measures are temporary and comply with State rules and regulations. As a condition of its emergency permit, the County may require that temporary structures be covered by sand or fronted by a dune feature.

Any physical structures placed on the beach as the result of an emergency permit issued by Walton County shall be designed and sited to minimize excavation of the beach and frontal dune and impacts to native vegetation, sea turtle habitat, beach mouse habitat, and adjacent beachfront properties. These temporary structures must also be designed and sited to facilitate their removal (see Bonding Requirement below).

Siting of Protective Structures

All protective measures shall be implemented in a manner that minimizes adverse impacts to the coastal system, native vegetation, and adjacent properties while still providing adequate protection for the vulnerable structure. If a temporary structure is permitted, it shall be sited landward of the dune escarpment and as close to the vulnerable structure as practicable to provide sufficient protection. The Coastal Engineer shall use his/her best professional judgment in determining the appropriate location of protective structures. Information that will influence the location includes:

- The type of protective material(s) to be used;
- Construction methods;
- Site topography;
- Distance between the vulnerable structure and the dune escarpment;
- Extent of erosional threat to the vulnerable structure;
- Presence/absence of sea turtle nesting habitat, marked nests, and/or viable beach mouse habitat; and

DRAFT 4

- Other site-specific conditions.

Implementation of *Emergency Shoreline Protection Measures*

All shoreline protection activities initiated under the County’s emergency authorization shall be conducted in conformance with the protective measures and monitoring described in this HCP and the terms and conditions of the ITP. No construction activities of any kind related to emergency armoring authorized under the County’s ITP, including placement of equipment and/or materials seaward of the primary dune, may be initiated until an emergency permit has been issued by the County.

Timing Constraints

Emergency permits will only be issued for threatened structures following the passage of severe storm events that have been declared an emergency by the State or Board of County Commissioners. These events typically occur during late summer (tropical storm activity) or fall/winter (northeasters), and thus are most likely to occur near the end or outside of the sea turtle nesting season. However, it is essential that property owners be able to respond quickly to these events, even if they occur during the nesting season. In most instances where an eligible structure is vulnerable to damage from erosion caused by a severe storm event, the nesting habitat will have been seriously impacted and any nests present will have, in all likelihood, been washed out or destroyed by prolonged or repeated tidal inundation.

Under this HCP, emergency shoreline protection measures may be undertaken at any time of the year. However, if construction is to occur during any portion of the sea turtle nesting season, the following precautions must be in place:

- A standardized, daily sea turtle monitoring program (see Chapter 14), encompassing the project area, must be in place at least 65 days prior to commencement of construction or May 1st, whichever is later;
- A pre-construction assessment of the project area must be performed to determine if any marked sea turtle nests or viable beach mouse habitat remain after the storm;
- If marked nests are present during the initial post-storm survey, the FWC shall be consulted to determine if they can be moved. Upon concurrence from the FWC, those nests vulnerable to impact from erosion or construction activities may be relocated to a safe, suitable in-beach location outside the project area;
- Nests that will not be impacted by construction activities will be conspicuously marked for avoidance; and
- Daily sea turtle monitoring must continue until the first of the following:
 - August 31 or the last marked nest in the project area has hatched, whichever is later, or
 - The temporary structure is removed from the beach, whichever comes first.

DRAFT 4

If Walton County issues an emergency permit, the permittee has a maximum of 30 days from the date of issuance of the permit to complete implementation of authorized measures. Walton County may grant a 30-day extension to complete emergency protection measures provided the permittee can demonstrate that emergency conditions still exist at the site. If the permittee fails to complete emergency protection measures within 60 days of issuance of the emergency permit, all construction activities at the site must cease. If a temporary protective structure was installed or partially completed during the authorized period of construction, the property owner (or legal agent) may submit an application to the FDEP for the retention of that structure or alternative protection, as described below.

Applications for Permanent Structures

The County shall notify FDEP's Bureau of Beaches and Coastal Systems, 3900 Commonwealth Boulevard, Mail Station 300, Tallahassee, Florida 32399-3000, in writing within three working days of the date of issuance of an emergency permit for the installation of temporary armoring. Notification, at a minimum, shall include the following:

- The name and address of the property owner(s);
- The physical location of the building or public infrastructure to be protected; and
- A description of the permitted structure, including a sketch and location of the structure relative to the building or public infrastructure to be protected and the existing scarp or dune line.

Upon receipt of the notification described above, the FDEP will assign an FDEP permit number to facilitate tracking of the project from its inception through authorization of a permanent solution, if applicable. The County shall append this number to its emergency shoreline protection permit issued for the project.

As a condition of the emergency permit, the permittee shall be required to notify the County when installation of the temporary structure is complete. Installation will be considered complete on the date all construction activities are terminated and all equipment and materials have been removed from the beach and dune system. The County shall inspect the site to verify that installation is complete.

Within 60 days from the date that a temporary shoreline protection structure is installed under an emergency permit issued by the County, the property owner (or legal agent) must submit an application to the FDEP for a CCCL permit authorizing retention of the temporary structure or requesting alternative protection. If a CCCL permit application is not submitted to the FDEP within the allocated time frame, the temporary structure may have to be removed in accordance with provisions described below.

DRAFT 4

The FDEP will notify Walton County upon receipt of a complete application for a permanent structure to replace temporary protection measures implemented under the County's emergency authorization. In support of the application, the County will review the proposed action with respect to conformance with County Code and applicable Land Development Regulations and provide appropriate recommendations. Walton County may require inclusion of a vegetated dune over or adjacent to the armoring structure as a design feature of the permanent installation (see Chapter 11).

If temporary armoring has been installed as authorized under an emergency permit issued by Walton County and the property owner submits a complete application to the FDEP for the retention of the temporary structure or alternative protection, the temporary structure may remain in place until one of the following occurs:

1. The FDEP issues a permit for permanent armoring.

In this case, the temporary structure may remain in place until it can be reinforced to serve as a permanent structure or alternative protection is approved and installed. All activities associated with the replacement of a temporary structure with permanent armoring shall be conducted in accordance with provisions of this HCP.

2. The FDEP denies the permit application.

In this case, the temporary structure shall be removed at the earliest possible date in accordance with provisions of this HCP (see Bonding Requirement below).

Upon issuance of an emergency permit, the County shall consult with the affected property owner (or legal agent) to ensure that the rules and regulations associated with the retention of temporary structures or installation of alternative protection are clearly understood and shall provide guidance to the affected party during the preparation of an FDEP CCCL permit application, as applicable. The County will acquire guidance materials and/or a standard permit application package from the FDEP for permanent structural shoreline protection measures and will provide this information to affected property owners upon issuance of an emergency permit. Following application to the FDEP for a permit to retain a temporary shoreline protection structure or install alternative protection, the Coastal Engineer shall assist the FDEP in obtaining site-specific information germane to the review of the permit application.

Denial of Applications for Permanent Structures

Any emergency protection measure deemed appropriate by the Coastal Engineer shall be allowed at any location along the County's beaches in accordance with the rules and regulations contained in this HCP, State statute, and administrative code rule. However, application for a permanent shoreline protection structure shall be denied by the FDEP if the application is determined to be inconsistent with State laws and rules, with the exception of those provisions pertaining to the take of sea turtles. (The USFWS will explicitly authorize take of sea turtles associated with shoreline protection activities

DRAFT 4

initiated and conducted in accordance with the terms and conditions of the County's ITP.) Applications for a permanent structure shall also be denied by the FDEP if a beach nourishment, beach restoration, sand transfer or other similar project that would provide protection for the vulnerable structure is scheduled for construction within nine (9) months of receipt of the FDEP application, all State and/or Federal permits for the project have been issued, and funding is available. Each year, the County shall provide the FDEP with a schedule and status report of all constructed and pending County-sponsored beach nourishment projects. This information will be contained within the State of Florida Beach Erosion Control Program Annual Budget Request, an annual report submitted to the State that indicates the status of the County's various beach projects and requests funding for planned projects during the subsequent fiscal year.

Removal of Temporary Structures

If the FDEP rejects an application for the retention of a temporary structure or alternative protection, the temporary structure must be removed by the applicant, at no cost to Walton County or the State, within 60 days of the official notice denying the application or final adjudication of any administrative hearings between the FDEP and the applicant, as applicable. Removal of temporary structures shall be in accordance with all provisions of this HCP (see Bonding Requirement below). Failure to remove an un-permitted structure is a failure to comply with Part I of Chapter 161, FS, and may be found to be a first degree misdemeanor and subject the applicant to administrative fines imposed by the FDEP. In addition, if an unsuccessful applicant fails to remove an un-permitted temporary structure, Walton County may cause the structure to be removed and file a lien in the Official Records against the property for the costs of removal.

Bonding Requirement

This HCP describes several scenarios under which a temporary shoreline protection structure may have to be removed from the beach. To ensure that adequate funding is available to remove these structures, when necessary, the County will incorporate a bonding agreement or other legal instrument into each of its emergency permits issued for temporary armoring structures. Every applicant for an emergency permit involving the installation of a temporary armoring structure will be required to sign an affidavit certifying that he/she will obtain a surety bond in the amount of \$100,000 listing Walton County as the Obligee/Receiver. This bond will be used by the County to remove the structure, in the event the permittee lacks sufficient finances to do so. Evidence of the bond must be delivered to Walton County within 30 days of issuance of the emergency permit. Other legal instruments providing similar funding guarantees may be accepted with prior approval of the County Attorney. Failure to obtain a surety bond or other acceptable funding instrument in a timely manner may be cause for revocation of the emergency permit. The County will also withhold local approvals for FDEP CCCL permits to retain temporary emergency structures as permanent structures until the funding assurances described herein are in place.