

**CHAPTER 62, ARTICLE X,
DIVISION 3.**

SURFACE WATER PROTECTION*

* **State Law References:** Provisions for protection of environmentally sensitive lands required, F.S. § 163.3202(2)(e); water resources, F.S. ch.373; management and storage of surface waters, F.S. § 373.403 et seq.

Sec. 62-3661. Definitions.

For the purpose of this division, certain terms and words are defined as follows:

Accessory structure means a building or structure as defined in, and consistent with, Chapter 62, Article VI of this chapter. Accessory uses shall include but not be limited to all impervious surfaces within the surface water protection buffer.

Alteration of mangroves means the cutting, removing, defoliating, disturbing or otherwise damaging or destroying of mangroves.

Aquatic Preserves means those sovereignty lands established by the state and managed under the provisions set forth in Chapters 253 and 258, F.S., as amended.

Best public interest means public projects which clearly demonstrate a net benefit to the public, as determined by the Board of County Commissioners, and which adequately mitigate adverse environmental impacts.

Boat slip means a space designed for the mooring of a single watercraft and usually projecting from a dock or shoreline.

Buffer Access means the ability to temporarily or permanently transgress property to the shoreline or other permitted structures, or to access specific sites of the property in the surface water protection buffer by means of allowable uses.

Buffer Establishment Line means a surveyed contour line along a shoreline from which the landward surface water protection buffer may be identified. The line is established along the approximate land-water interface of a shoreline. The elevation of 0.9 feet N.G.V.D. 1929 shall be used to define the line along the Indian River Lagoon system. The use of this line is exclusive to Brevard County for the sole purpose of establishing the surface water protection buffer and infers no jurisdictional or property boundaries.

Bulkhead and seawall mean a manmade shoreline wall, breakwater or encroachment, excluding shoreline stabilization as defined herein, designed or positioned to break the force of waves or to hold back or protect the shoreline from erosion. Headwalls and other similar minor structures necessary for the implementation of permitted stormwater management systems shall not be considered bulkheads.

Canal means a manmade linear waterway constructed through uplands and designed for navigation of vessels excluding those linear waterways whose primary purpose is conveyance of drainage.

Class I waters means waters designated by the state as a source of potable water supply and defined in Chapter 62-302, F.A.C., as amended.

Class II waters means waters designated by the state for shellfish propagation and harvesting as determined by FDEP and defined in Chapter 62-302, F.A.C., as amended.

Class III shellfish harvesting areas means those areas within Class III waters designated suitable for shellfish harvesting by FDEP in Chapter 5L-1, F.A.C., as amended.

Class III waters means waters designated by the state for recreation, and propagation and maintenance of a healthy, well-balanced population of fish and wildlife. This includes all waters within the County, except:

- (1) Those designated as Class I or Class II waters, Class III shellfish areas, Outstanding Florida Waters, and Aquatic Preserves as described in this section;
- (2) Those waters which are part of a designated stormwater management system, which are utilized only for stormwater management and are not considered Class III waters by FDEP;
- (3) Those waters that are manmade water bodies that do not have a direct surface water connection to natural water bodies;
- (4) Existing manmade water bodies not connected to the Indian River Lagoon system which are incidental to bona fide agricultural operations utilizing best management practices (BMPs), on lands having been granted an agricultural tax exemption; and
- (5) Those existing manmade water bodies defined in subsection (4) of this definition which are undergoing conversion during development, as evidenced by an approved development order, to approved designated stormwater management systems not designed to outfall to waters of the state, and which do not increase sediment or pollutant loading to the receiving water body during construction.

Degrade means to discharge or release, through direct or specific manmade activities or events, any substance into the waters within the County which reduces, lowers or contaminates existing receiving water quality.

Direct surface water connection means a situation where the single point of connection of a water body to Class I, II, or III waters is 35 square feet or greater in cross sectional area and normally has a water depth of three feet or greater.

Director means the director of the Brevard County Natural Resources Management Office or designee.

Dock means a fixed or floating structure, including moorings, used for the purpose of berthing buoyant vessels either temporarily or indefinitely.

Elevated structure means those structures designed, constructed and located above the ground surface so as to not impede the natural flow of water on the ground surface and to allow the growth and maintenance of vegetation.

Erosion means the wearing away of land through natural or artificial causes. Gradual erosion means the slow wearing away of land due to natural and/or artificial causes. Accelerated erosion means the rapid or catastrophic loss of land due to natural and/or artificial causes.

FDEP means the Florida Department of Environmental Protection, or its successor agency.

Hazardous material means any material which is either a hazardous substance or hazardous waste as defined in this section. A hazardous material includes any solution, mixture or formulation containing such material.

Hazardous substance means any material defined, listed or classified as a hazardous substance or toxic substance according to any of the following state or federal codes or regulations:

- (1) Chapter 38F-41, F.A.C., as amended, (the Florida Substance List); or
- (2) Title 40 of the Code of Federal Regulations Part 302.4 (Designation of Hazardous Substances).

Hazardous waste means any material defined, listed or classified as a hazardous waste according to the following state or federal codes or regulations:

- (1) Title 40 of the Code of Federal Regulations part 261 (Identification and Listing of Hazardous Substances); or
- (2) Chapter 62-730, F.A.C., as amended (Hazardous Waste).

Impervious surface means a surface which has been compacted or covered with a layer of material so that it is highly resistant to infiltration by water. This shall include but not be limited to semi-impervious surfaces such as compacted clay, as well as most surfaced areas, roofs, sidewalks, paver stones, and other similar structures.

Indian River Lagoon system includes the Indian River, the Banana River, Mosquito Lagoon, Newfound Harbor and Sykes Creek, and their tributaries.

Living shoreline means erosion management techniques, such as the strategic placement of plants, stone, sand, and other structural and organic materials, that are used primarily in areas with low to moderate wave energy, and are designed to mimic natural coastal processes.

Mangrove means any specimen, or any portion of any specimen, living or dead, of the species *Avicennia germinans* (black mangrove), *Laguncularia racemosa* (white mangrove), or *Rhizophora mangle* (red mangrove).

Marina means all boating facilities with three or more wet and/or dry slips (consistent with current County definition). A marina is a facility or structure, which provides mooring, docking, anchorage, fueling, repairs, launching, or other related services for watercraft. Private boat docks associated with single family lots are exempt from this category.

- (1) *Residential marina* means community docks exclusively serving subdivisions, condominiums, duplexes, or other multi-family developments. No fueling or repair facilities shall be associated with these marinas.
- (2) *Commercial/recreational marina* means public or private facilities which provide dockage and other related amenities not exclusively associated with a subdivision, condominium, duplex or other multi-family development.
- (3) *Commercial/industrial marina* means facilities serving largely commercial interests, including commercial boat building, ship repairs or construction, and commercial seafood harvesting and processing.

Minor structures means non-habitable structures such as storage sheds, pump houses and gazebos.

Mitigation means restoration, reclamation or compensation for manmade or man-induced environmental damage or adverse conditions. All mitigations for environmental impacts shall be reviewed and approved by NRMO as subject to Section 62-3662.

Native Vegetation means those plant species indigenous to Florida as determined by the best available scientific and historical documentation and suitable for planting in Brevard County. *The Atlas of Florida Native Plants* maintained by the Institute for Systemic Botany, University of South Florida shall be used as a reference.

NRMO means the Brevard County Natural Resources Management Office or its successor agency.

Outstanding Florida Waters means those water bodies afforded special protection and described within Chapter 62-302, F.A.C., as amended, and designated under the authority of Chapter 403, F.S., as amended.

Overriding public benefit means the result of a development action by a private property owner that substantially preserves, restores or enhances those natural functions which define areas of critical concern, environmentally sensitive areas, shorelines or water bodies, identified by the County Comprehensive Plan, NRMCO or state or federal agencies. An overriding public benefit shall include but not be limited to proposals which preserve, restore or enhance floodplain, wetland, shoreline or prime aquifer recharge functions and provide for the dedication of associated lands to the County or other acceptable public entity or agency.

Passive Recreation means recreational uses where very minimum alteration of vegetation, topography or other native feature is necessary for the enjoyment of the site amenities. Activities which are considered passive include, but are not limited to, hiking, bicycling, nature observation, camping, picnicking, non-motorized recreation and sports, and archaeological or historic preservation.

Petroleum means oil of any kind and in any form and derivatives thereof, to include but not be limited to crude petroleum or liquid products that are derived from crude petroleum by distillation, cracking, hydroforming or other petroleum refinery processes, including gasoline.

Pier means a fixed or floating structure used to provide over-water pedestrian access from the land for recreational purposes including walking, fishing, swimming, or observing. The berthing of buoyant vessels, either temporarily or indefinitely, is not permitted.

Public Interest means demonstrable environmental, social, and economic benefits which would accrue to the public at large as a result of a proposed action, and which would clearly exceed all demonstrable environmental, social, and economic costs of the proposed action. In determining the public interest in a request for use, sale, lease, or transfer of interest in sovereignty lands or severance of materials from sovereignty lands, the board shall consider the ultimate project and purpose to be served by said use, sale, lease, or transfer of lands or materials.

Reinforced rock revetment habitat means an approved bulkhead established between existing bulkheads on each immediately adjacent shoreline, with a required rock revetment adjoining the structure on the waterward side, designed to allow for aquatic habitat and additional shoreline benefits.

Release means any sudden or gradual spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping or disposing of substances or wastes, including the abandonment or discarding of barrels, containers and other receptacles containing any substances or wastes, into the environment, in such a manner as to endanger the public health, safety, aesthetics or welfare or the environment, or in violation of any federal, state or local law, rule or regulation.

Retaining wall means a structure that holds back soil or rock from a building, structure, or area; prevents downslope movement or erosion; or provides support for vertical or near-vertical grade changes.

Safe upland line means a boundary line determined by the FDEP, Bureau of Survey and Mapping, in consultation with the applicant. The safe upland line is normally located landward of either the mean or ordinary high-water line and is based upon the location of known or approximated mean high-water lines, ordinary high-water lines and mature upland vegetative communities, whichever is applicable.

Seawall. See *Bulkhead.*

Shoreline stabilization means alteration of the shoreline or the surface water protection buffer from its natural state for the purpose of minimizing erosion utilizing riprap material, interlocking brick systems, rock revetments, vegetation, living shorelines, retaining structures located in uplands, or other allowable methods.

SJRWMD means the St. Johns River Water Management District, or its successor agency.

Structure means anything constructed or erected, the use of which requires rigid location on the ground or attachment to something having a permanent location on the ground.

Surface water protection buffer means the protected area adjacent to and landward of the surface waters of the County as established by this division. On non-bulkheaded lots, the waterward extent of the surface water protection buffer shall be the Buffer Establishment Line or the safe upland line, as agreed upon by the applicant. Additionally, mean high water line or ordinary high water line may be used if the applicant can provide documentation that the line and associated elevation is specifically approved by FDEP. On bulkheaded lots, the waterward extension of the surface water protection buffer shall be measured from the face of the existing bulkhead.

Temporary access means access in the surface water protection buffer for allowable use for construction, maintenance, restoration, non-native/invasive species removal, or mandated corrective actions.

Sec. 62-3662. Shall be reserved.

Sec. 62-3663. Purpose and intent.

It is the purpose and intent of this division to improve the quality of surface waters within the County, and protect and enhance the natural functions of these waters. It is also the intent of this division to apply the standards set out in this division for development in and adjacent to Class I, II and III waters, Outstanding Florida Waters and Aquatic Preserves.

Sec. 62-3664. Administration.

The Director shall be responsible for the general administration of this division of this article. The Director shall be responsible for all reviews of all applications, in addition to providing the administrative decisions which pertain to this division. Upon request, the Director

shall provide written confirmation of any decision or findings relating to applications or reviews made pursuant to this division and letters of interpretation or intent.

Sec. 62-3665. Shall be reserved.

Sec. 62-3666. General provisions.

The following provisions shall apply to all Class I, II and III waters, Outstanding Florida Waters, Aquatic Preserves, and conditionally approved Class III shellfish harvesting waters within the County:

(1) All alterations within the surface water protection buffer shall be reviewed and/or permitted by the County unless exempt pursuant to Section 62-3669.

(2) Projects within the surface water protection buffer requiring a Surface Water permit shall provide a restoration plan for temporary impacts. Temporary impacts shall be limited to the minimum alteration(s) necessary to accomplish the allowable use. The review, approval, and inspection of the temporary impact restoration plan shall be included as part of the Surface Water permit. Temporary impacts to wetlands shall only be allowed in accordance with Chapter 62, Article X, Division 4.

(3) Any alteration as allowed under this Division, including redevelopment, within the surface water protection buffer shall require stormwater management so as not to degrade the receiving water body water quality. Properties shall, through the use of swales, berms, perforated pipe, native vegetation, or other appropriate methods; convey and detain stormwater runoff prior to discharge to the surface water.

- a. For activities in the surface water protection buffer, stormwater management shall include, but not be limited to:
 - i. The provision of a stormwater system designed, signed, and sealed by a Professional Engineer registered in the state of Florida, which is consistent with Chapter 62-302 F.A.C., as amended, and is capable of preventing the first inch of runoff from a 25-year, 24-hour storm, from all impervious surfaces that drain to the property's shoreline from entering surface waters; or
 - ii. A densely planted shoreline of viable native vegetation, a minimum of ten feet in width for the entire length of the shoreline. The types and numbers of plants, ground coverage, and stabilization shall be consistent with Appendices B and C of Chapter 62, Article XIII, Division 2 (Landscaping, Land Clearing & Tree Protection), as amended, or as allowed by the Director.

With the exception of activities that are exempt in accordance with Section 62-3669, all requirements for stormwater management shall be reviewed, approved, and inspected by the County, as necessary.

- b. All discharges into surface waters shall not degrade existing water quality below existing conditions, or those outlined in Chapter 62-302, F.A.C., as amended.
- c. All stormwater management systems shall be maintained for functionality in perpetuity.
- d. Stormwater management retrofitting in accordance with this subsection, shall be required for all back lot drainage at the time of the allowable activity`.
- e. Stormwater management systems shall demonstrate avoidance and minimization of impacts to native vegetation.
- f. The Director may consider alternative stormwater management systems that utilize established low impact development best management practices.

(4) Shoreline stabilization and bulkhead projects completed under a County, and State as applicable, permit may be located with the surface water protection buffer. Any shoreline project involving bulkheads, revetments, or retaining walls shall be implemented by a marine contractor licensed in the State of Florida, or by a person recognized by the Director as qualified in construction in the marine environment. Alternatively, projects may be completed by a property owner/builder provided that the project is designed, signed, and sealed by a Professional Engineer registered in the State of Florida. Shoreline stabilization projects completed primarily by means of vegetation may be implemented by a person recognized by the Director as qualified in the evaluation of environmental systems and vegetative resources, such as a biologist, environmental scientist, or landscaping professional.

(5) All improvements, mitigations and special conditions approved or set forth by this division shall be required to be installed, constructed and maintained in a viable, approved, functional working order.

(6) All alteration and development shall demonstrate avoidance and minimization of environmental impacts in accordance with Chapter 62, Article X, Division 4.

(7) Only vegetation identified in Appendices B and C of Chapter 62, Article XIII, Division 2 (Landscaping, Land Clearing & Tree Protection), as amended, or as allowed by the Director, shall be planted in the surface water protection buffer. Non-Native Invasive or Undesirable plant species may be removed from the surface water protection buffer in the manner authorized in Section 62-4334(4), as amended.

(8) All applications for bulkheads and reinforced rock revetment habitats shall meet the following minimum criteria, as applicable:

- a. For lots along Class I waters, Class II waters, Class III shellfish harvesting areas, Aquatic Preserves, Outstanding Florida Waters, and Class III waters that are not in residential neighborhood canals, the following shall apply:

- i. New bulkheads shall be prohibited.
 - ii. For those properties on the Indian River Lagoon system immediately between two adjacent existing bulkheads, NRMO may permit a reinforced rock revetment habitat, provided that all additional required permits and reviews from appropriate agencies have been obtained. All permitted structures shall be subject to the additional requirements of this division. When feasible, the bulkhead portion of the structure shall be located above the mean high-water line.
 - iii. The permitted system design shall provide reasonable assurance that the erosion of the abutting properties will not be accelerated by the establishment of the applicant's bulkhead.
 - iv. The permitted system shall meet the wetlands avoidance, minimization, and mitigation standards contained within Chapter 62, Article X, Division 4.
 - v. The repair and replacement of legally existing bulkheads shall be allowable in accordance with (8)(c) of this subsection.
 - vi. Stormwater management shall be provided in accordance with Section 62-3666(3).
 - vii. Applications for permits along the Indian River Lagoon system shall be submitted to NRMO for a Surface Water permit. The applicant shall also obtain permits from State and Federal agencies, as applicable.
- b. For lots along existing canals in residential neighborhoods, the following shall apply:
- i. The establishment of new bulkheads shall be permissible.
 - ii. New bulkheads shall not increase the waterward extension of the existing shoreline except to locate parallel and in line with adjacent existing and legally permitted bulkheads. The Director may consider alternative designs that compensate for shoreline irregularities.
 - iii. New bulkheads shall meet the avoidance, minimization and mitigation standards contained within the wetlands protection regulations (Article X, Division 4, Brevard County Code, as amended).
 - iv. The permitted bulkhead system design shall provide reasonable assurance that the erosion of the abutting properties will not be accelerated by the establishment of the applicant's bulkhead.

- v. The repair and replacement of legally existing bulkheads shall be allowable in accordance with (8)c of this subsection.
 - vi. Stormwater management shall be provided in accordance with Section 62-3666(3).
 - vii. Applications for permits for any bulkhead on a canal shall be submitted to the Brevard County Building Department for a combined Building/Surface Water permit.
- c. The repair and replacement of bulkheads may be permitted in accordance with the following:
- i. The repair and replacement of legally existing bulkheads on the Indian River Lagoon system shall be allowable, except where the existing structure is less than 50 percent functional per original constructed design and a reinforced rock revetment habitat is not permissible.
 - ii. If permissible, the repair and replacement of bulkheads on the Indian River Lagoon system shall require the establishment of a reinforced rock revetment habitat.
 - iii. If an existing bulkhead cannot be removed due to safety, structural, or other environmental concerns, the waterward extension of the new bulkhead, where practicable, shall meet the least waterward extension of these criteria:
 - a) Shall not exceed a maximum of eighteen (18) inches from the existing waterward bulkhead face, except where otherwise permitted by FDEP.
 - b) Shall be located parallel and in line with adjacent existing and legally permitted bulkheads.
 - c) A bulkhead shall not extend further than 48 inches into a canal as recorded in the public records.
 - iv. Stormwater management shall be provided in accordance with Section 62-3666(3).
 - v. For the repair and replacement of a bulkhead on a residential canal meeting all of the following criteria, NRMO shall review and approve only the required stormwater management system, and a Surface Water permit shall not be required:

- a) The restoration of a bulkhead at its previous location or immediately upland of or within 18 inches waterward of its previous location, as measured from the face of the existing bulkhead to the face of restored bulkhead.
- b) No filling can occur except in the actual restoration of the bulkhead.
- c) No construction shall be undertaken without necessary ownership or leasehold interest, especially where private and public ownership boundaries have changed as a result of natural occurrences such as accretion, reliction, and natural erosion.
- d) This exemption shall be limited to bulkheads that are 50 percent functional per original constructed design.

(9) For shorelines where bulkheads and reinforced rock revetment habitats are prohibited, shoreline stabilization shall be allowed to protect structures and real property from both gradual and accelerated erosion. A County Surface Water permit for shoreline stabilization shall be obtained prior to any stabilization activities.

- a. Living shorelines shall be a preferred shoreline stabilization technique.
- b. Riprap material, rock revetments, pervious interlocking brick systems, filter mats, vegetation, and other allowable methods may be used as stabilization methods within the surface water protection buffer. The following standards shall be implemented unless the State provides alternative project-specific construction criteria:
 - i. Material shall be natural or clean (free from reinforcing rods and other debris).
 - ii. Rock size shall be one to three feet in diameter.
 - iii. Slope shall be no steeper than two feet horizontal to one foot vertical.
 - iv. Filter fabric shall be installed.
 - v. Navigation shall not be impeded.
- c. If a revetment restoration or replacement project meets all of the following criteria, NRMO shall approve the required stormwater management system under an environmental review; however, a County Surface Water permit shall not be required:
 - i. A SJRWMD or FDEP permit or exemption has been issued.

- ii. No filling can occur except in the actual restoration of the revetment.
- iii. The project will not require wetland impacts or the removal of native vegetation.
- iv. No construction shall be undertaken without necessary ownership or leasehold interest, especially where private and public ownership boundaries have changed as a result of natural occurrences such as accretion, reliction, and natural erosion.
- v. This exemption shall be limited to functioning revetments.

(10) For any proposed shoreline stabilization, NRMO must be provided with plans, test results or other professionally accepted information that affirmatively demonstrates that any proposed shoreline stabilization project will not:

- a. Adversely impact water quality.
- b. Result in the loss of shoreline and aquatic vegetation.
- c. Adversely affect adjacent properties.
- d. Adversely affect biological communities.
- e. Increase the waterward extension of the existing shoreline, except as provided in subsection (8) of this section.
- f. Adversely affect the flow of water or create a navigational hazard.

(11) During an emergency as declared by the Brevard County Board of County Commissioners, shoreline stabilization may be completed without a permit from NRMO. All work shall be accomplished in accordance with the criteria contained within this division. An after-the-fact permit at the standard fee shall be obtained from NRMO within 90 days of the end of the declared emergency. All applicants shall be subject to and responsible for obtaining all additional necessary Federal, State, and local permits.

(12) New navigation canals connected to the Indian River Lagoon system are not permitted. Existing ditches, drainage rights-of-way, drainage easements and stormwater facilities which connect to the Indian River Lagoon system shall not be widened or deepened to accommodate boat traffic, except when in the best public interest. New boat docks, boathouses and other related structures, or the expansion of these existing structures, shall not be allowed or permitted within or adjacent to existing ditches, drainage rights-of-way, drainage easements or stormwater facilities which connect to the Indian River Lagoon system. Maintenance of existing ditches, drainage rights-of-way, drainage easements or stormwater facilities which connect to the Indian River Lagoon system that have been specifically designated for boat traffic on subdivision plats or site plans, or which have been historically and effectively utilized for buoyant vessel

navigation prior to the effective date of the ordinance from which this division is derived, shall be permitted upon review.

(13) Marina siting criteria shall be as follows:

- a. Development of new residential/recreational, commercial/recreational and commercial/industrial marinas shall be subject to the following conditions:
 - i. Marinas shall not be located in approved or conditionally approved shellfish harvesting waters or class II waters so as to substantially and materially have a negative impact on these waters.
 - ii. Commercial/recreational and commercial/industrial marinas shall not be located in Aquatic Preserves or Outstanding Florida Waters so as to substantially and materially have a negative impact on these waters.
 - iii. All marinas shall affirmatively demonstrate compliance with Policy 9.9 of the Conservation element and Objective 5 and subsequent policies of the Coastal Management element of the Brevard County Comprehensive Plan, as amended. The affirmation shall include, but not be limited to, siting, habitat, and water quality criteria.
- b. Redevelopment or expansion of existing residential/recreational, commercial/recreational and commercial/industrial marinas shall affirmatively demonstrate compliance with Policy 9.9 of the Conservation element and Objective 5 and subsequent policies of the Coastal Management element of the Brevard County Comprehensive Plan, as amended. The affirmation shall include, but not be limited to, siting, habitat, and water quality criteria.

(14) For lots platted or established by deed on the official record books of the County after April 3, 1989, septic tanks and drainfields shall be set back at least 100 feet from the Buffer Establishment Line, or the safe upland, mean high water, or ordinary high water line as determined by the FDEP Bureau of Survey and Mapping, whichever the applicant prefers, except where a variance has been granted by the State, and there is insufficient room to increase the setback. Advanced wastewater treatment or advanced secondary treatment shall be required for any septic tank and drainfield system within 100 feet of the Indian River Lagoon.

(15) For lots with no existing septic system and drainfield platted or established by deed on the official record books of the County before April 3, 1989, septic tanks and drainfields shall be set back at least 100 feet from the Buffer Establishment Line, or the safe upland, mean high water, or ordinary high water line as determined by the FDEP Bureau of Survey and Mapping, whichever the applicant prefers. In those cases where there is insufficient lot depth, the septic tank and drainfield shall be a minimum of 75 feet from Buffer Establishment Line, or the safe upland, mean high water, or ordinary high water line as determined by the FDEP Bureau of Survey and Mapping, whichever the applicant prefers, except where a variance has been granted by the state, and there is insufficient room to increase the setback. Advanced wastewater

treatment or advanced secondary treatment shall be required for any septic tank and drainfield system within 100 feet of the Indian River Lagoon.

(16) Approved alteration pursuant to this division that occurs within the surface water protection buffer shall be reviewed by NRMO. When a State permit is neither required nor obtained, NRMO shall have the authority to require the applicant to utilize temporary sediment or turbidity control methods during construction. All erosion control methods shall be submitted in writing, shall be approved by NRMO, and shall be installed by the applicant. Sediment and turbidity control methods shall be in place and maintained throughout the alteration process. Erosion and sedimentation control measures may include:

- a. Best Management Practices as outlined in the *Florida Stormwater, Erosion, and Sedimentation Control Inspectors Manual*, 2005, FDEP and Florida Department of Transportation, as amended; and as required by Chapter 62-25, F.A.C., as amended.
- b. A densely vegetated buffer in accordance with Chapter 62, Article XIII, Division 2, Appendices B and C, as amended, may effectively prevent sedimentation of the surface water body if the vegetation completely or nearly completely covers the ground. Vegetation buffers shall consist of existing vegetation with a greater than 75 percent understory cover and shall remain undisturbed. The removal of existing native vegetation for the replacement of non-native vegetation as a buffer requirement shall be prohibited. Minimum required buffer depths shall be 50 percent of the required surface water protection buffer depth. Additional temporary erosion control methods may be required during construction in conjunction with approved vegetation buffers.

(17) For structures and impervious areas that existed prior to September 8, 1988, and exceed the allowable impervious impact criteria established herein, remodeling and other types of development which do not increase the amount of impervious surfaces within or threaten the integrity of the surface water protection buffer will be allowed. Proposed redevelopment may occur in the existing vertical envelope or may be relocated within the surface water protection buffer to achieve a net impact reduction. At a minimum, staff will assess the following mitigating factors:

- a. The applicant shall not increase the amount of impervious surfaces within the surface water protection buffer, regardless of location within the buffer.
- b. New impervious areas shall be located parallel with, or landward of, the waterward-most pre-existing impervious areas.
- c. Stormwater management in accordance with Section 62-3666(3).

(18) The release of petroleum or hazardous materials into Class I, II and III waters, Aquatic Preserves, Outstanding Florida Waters, and designated stormwater systems shall be prohibited.

(19) The provisions of this division shall not prohibit the location or construction of public utility crossings or other similar public structures by public utilities, provided these utilities have received all additional required permits or approvals.

Sec. 62-3667. Class I waters.

The following regulations shall apply to development in and adjacent to Class I waters:

(1) There shall be a 200-foot surface water protection buffer extending landward from the ordinary high water line, mean high water line, or safe upland line as determined or approved by the FDEP Bureau of Survey and Mapping. In lieu of an approved ordinary high water line, mean high water line, or safe upland line, an alternative line that approximates the water/shoreline interface may be approved by the Director.

(2) Alteration within the surface water protection buffer other than that which is permitted under this division shall be prohibited, unless it is shown to be in the public interest and does not adversely impact water quality and natural habitat. Allowable uses within the surface water protection buffer are passive recreation, hunting, fishing, fish and wildlife management, open space and nature trails, and similar uses. Development within the surface water protection buffer is limited to structures for water access such as docks, boat ramps, pervious walkways, and elevated minor structures.

(3) No more than 30 percent of any surface water protection buffer of a project or parcel, or the offshore emergent vegetation associated with a project or parcel, may be altered. This shall not preclude mitigation projects or the planting of native vegetation.

(4) All discharges into Class I waters shall not degrade existing water quality below existing conditions, or those outlined in Chapter 62-302, F.A.C., as amended, for Class I water bodies.

(5) Dredging or filling of Class I waters shall be prohibited, except for permitted utility crossings, publicly owned recreational projects which do not degrade water quality, environmental restoration projects, necessary maintenance of existing projects, and projects with an overriding public benefit.

(6) Development of mining operations shall not degrade water quality of Class I waters. No commercial borrow pits or mining operations shall be permitted within the ten-year floodplain of Class I waters.

(7) The criteria contained in this section do not supersede the floodplain protection criteria set forth in Chapter 62, Article X, Division 5.

Sec. 62-3668. Class II waters, Outstanding Florida Waters, Aquatic Preserves, conditionally approved Class III shellfish harvesting waters and Class III waters.

The following regulations shall apply to development in and adjacent to Class II waters, Outstanding Florida Waters, Aquatic Preserves, conditionally approved Class III shellfish harvesting waters, and Class III waters:

(1) Along Class II waters, Outstanding Florida Waters, Aquatic Preserves and conditionally approved Class III shellfish harvesting waters, a 50-foot surface water protection buffer extending landward from the Buffer Establishment Line, or the ordinary high water line, mean high-water line, or the safe upland line as determined by the FDEP Bureau of Survey and Mapping, whichever the applicant prefers, shall be established.

(2) Along Class III waters, except conditionally approved Class III shellfish harvesting waters, a 25-foot surface water protection buffer extending landward from the Buffer Establishment Line, or the ordinary high water line, mean high-water line, or the safe upland line as determined by the FDEP bureau of Survey and Mapping, whichever the applicant prefers, shall be established.

(3) Except as allowable under Section 62-3668(7), primary structures shall not be allowed within the surface water protection buffer. Alteration or construction of accessory structures is allowable within the surface water protection buffer provided that:

- a. Stormwater management is provided in accordance with Section 62-3666(3); and
- b. Impervious areas do not exceed 30 percent of the required buffer area, except for properties on existing residential canals; and
- c. The alteration occurs in accordance with all other applicable federal, state, and local regulations.

Alteration or construction other than that which is allowed under this division shall be prohibited, unless it is shown to be in the public interest and does not adversely impact water quality and natural habitat.

(4) All alteration shall demonstrate avoidance and minimization of surface water protection buffer impacts, including the location of the alteration within the most landward portion of the buffer, as practicable. The remainder of the surface water protection buffer shall be maintained in unaltered vegetation, except for non-native invasive plants as defined in Section 62-4332, as amended. Approved shoreline stabilization systems and temporary access are not subject to the provisions of this section. This shall not preclude mitigation projects, the planting of native vegetation, or the development described in applicable sections of this division within the surface water protection buffer areas.

(5) For projects or parcels with mangroves, mangrove alteration shall be in compliance with applicable federal and state regulations.

(6) Temporary access shall be limited to the minimum alteration necessary to accomplish the allowable use and shall require an approved restoration plan in accordance with Section 62-3666(2).

(7) For residential lots platted or established by deed on the official record books of the County prior to September 8, 1988, a primary structure may be built within the surface water protection buffer, as indicted below, only if it can be shown that there is insufficient lot depth to allow the development of a primary structure as defined by the existing zoning classification of the property, and if all other alternatives and remedies are not applicable.

- a. Within Class II waters, Outstanding Florida Waters, Aquatic Preserves, and conditionally approved Class III shellfish harvesting waters, primary structures may be built within the landward 25 feet of the surface water protection buffer if all other requirements of this division are met.
- b. Within Class III waters, primary structures may be built within the landward ten feet of the surface water protection buffer if all other requirements of this division are met.
- c. Except for properties on existing residential manmade canals, the total amount of impervious area shall not exceed 30 percent of the required buffer area.

(8) A surface water protection plan must be submitted to and approved by NRMO prior to the establishment of structures or uses described herein. The surface water protection plan must include:

- a. A survey of the property, signed and sealed by a surveyor registered in the state, locating the mean high-water line, the ordinary high-water line, Buffer Establishment Line, or the safe upland line.
- b. A sketch, drawn to scale, on the survey indicating the location and building dimensions of the structures, and any proposed alteration of the surface water protection buffer.
- c. A description of the type of structures proposed and the construction materials to be used.
- d. A description of how stormwater management shall be provided in accordance with Section 62-3666(3).

(9) Dredging and filling shall not be permitted in or connected to Class II waters, Outstanding Florida Waters, Aquatic Preserves, and conditionally approved Class III shellfish harvesting waters unless:

- a. The activity is approved maintenance dredging on existing public navigational channels, or
- b. Where dredging is in the public interest by improving the water quality by removing accumulated silt or improving circulation, or
- c. For maintenance of existing structures and utility crossings, or
- d. For the construction of bulkheads or other shoreline stabilization methods as allowed by this division.

(10) Discharges into Class II waters, Outstanding Florida Waters, Aquatic Preserves, and conditionally approved Class III shellfish harvesting waters shall not degrade existing water quality below existing conditions, or those standards outlined in Chapter 62-302, F.A.C., as amended, for Class II water bodies, whichever provides for better water quality.

(11) Discharges into Class III waters shall not degrade existing water quality below existing conditions, or those standards outlined in Chapter 62-302, F.A.C., as amended, for Class III water bodies, whichever provides better water quality.

(12) Within the surface water protection buffer, the storage of fertilizers, pesticides, hazardous materials or other pollutants which may run off into surface waters shall be prohibited unless the storage system is an above ground vehicular fuel system meeting the requirements of Chapter 62-762 F.A.C., as amended.

Sec. 62-3669. Exemptions.

Alterations within the surface water protection buffer set forth in (1-3) of this subsection shall be exempt from a County Surface Water permit under this division, provided that the conditions set forth in (4) of this subsection are met:

(1) The construction of up to 250 square feet of impervious surfaces including, but not limited, to decks, paver stones, and walkways. Except for properties on existing residential canals, impervious areas shall not exceed 30 percent of the required buffer area. Impervious surfaces shall not convey drainage into the surface water protection buffer.

(2) The construction of elevated walkways, not to exceed five feet in width.

(3) The removal of Non-Native Invasive Plants in accordance with Chapter 62, Article XIII, Division 2.

(4) Alterations identified in (1-3) of this subsection shall meet the following criteria:

- a. Stormwater management is provided in accordance with Section 62-3666(3); and

- b. The alteration does not necessitate the removal of protected native vegetation in accordance with Chapter 62, Article XIII, Division 2; and
- c. The alteration does not impact wetlands in accordance with Chapter 62 Article X, Division 4; and
- d. The alteration is allowable in accordance with Section 62-3667; and
- e. Applicants shall be subject to and responsible for obtaining all additional necessary Federal, State, local, and building permits, as applicable.

Sec. 62-3670. Appeals.

Any appeals relating to any administrative decision or determination concerning implementation or application of the provisions of this Division shall be filed in accordance with the provisions set forth in Section 62-507, Brevard County Code, as amended.

Sec. 62-3671. Penalty; additional remedies; restoration of disturbed areas.

Penalties for violations of this division shall be as specified in Section 125.69, F.S., as amended, or Chapter 162, F.S., as amended, or any other appropriate remedy provided by law. The County may seek enforcement action against both the owner of record and any person or entity responsible for carrying out any prohibited action. In addition, mitigation or restoration of the area may be required in order to restore disturbed areas to the previously existing state prior to the unpermitted disturbance. The Director shall be responsible for reviewing and approving all restoration or mitigation plans. The provisions of this section are an additional and supplemental means of enforcing County codes and ordinances. Nothing in this section shall prohibit the County from enforcing this Code by injunctive relief, or by any other means provided by law.