

**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 use means a building, structure or use as defined in, and consistent with, article VI of this chapter. Accessory uses shall include but not be limited to all impervious surfaces within the shoreline protection buffer requiring a county building permit.

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 F.S. chs. 253 and 258.

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.

Bulkhead and seawall mean a manmade shoreline wall, breakwater or encroachment, excluding riprap, 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 within F.A.C. ch.17-3.

Class II waters means waters designated by the state for shellfish propagation and harvesting as determined by the state department of environmental regulation and defined

within F.A.C. ch.17-3.

Class III shellfishing areas means those areas within class III waters designated suitable for shellfish harvesting by the state department of natural resources under F.A.C. ch. 16R-7.

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 the state department of environmental regulation;
- (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 (BMP's), 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.

Designated stormwater management system means the manmade features of the property which collect, convey, channel, store, inhibit or divert the movement of stormwater and are identified as drainage easements or stormwater facilities on plats or subdivision plans and site plans. Common features include retention and detention basins.

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.

Dock, private means a fixed or floating structure, including moorings, used for berthing buoyant vessels or for shoreline access or water-oriented recreation. A private dock shall contain no more than two boat slips, and shall not be utilized for the purpose of producing or as an inducement to producing income.

Elevated 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.

Erosion means the wearing away of a shoreline or side slopes through the operation of currents, boat wakes, tides or the natural activity of rainfall.

Hardening means alteration of the shoreline from its natural state utilizing riprap material, interlocking brick systems, rock revetments, seawalls and bulkheads or similar structures.

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) F.A.C. ch.38F-41 (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) F.A.C. ch.17-30 (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 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.

Mangrove means any specimen, or any portion of any specimen, living or dead, of

the species *Avicennia germinans* (black mangrove), *Laguncularia racemosa* (white mangrove), *Rhizophora mangle* (red mangrove) or *Conocarpus erectus* (buttonwood).

Marina means a facility or structure which provides mooring, docking, anchorage, fueling, repairs or other services for watercraft. Docks accessory to single-family uses are exempt from this definition.

1. *Residential/recreational marina* means community docks serving subdivisions, condominiums or private organizations having three to 30 slips, inclusive. No fueling, wastewater pumpout or repair facilities are associated with these marinas.
2. *Commercial/recreational marina* means facilities having greater than 30 slips or any marina which has fueling, wastewater pumpout or repair facilities serving recreational interests.
3. *Commercial/industrial marina* means facilities serving largely commercial interests. Fueling facilities, repair, wastewater pumpout facilities and commercial sale of fish, including loading and shipping activities, are permitted within this category.

Minor structures means non-habitable structures such as storage sheds, pump houses and gazebos, and which do not exceed 400 square feet in total area.

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 the natural resources management division as subject to section 62-3662.

Native vegetation means vegetation originating, found or usually occurring within a particular region, area, climate or ecosystem. Native vegetation shall not include non-native, noxious or nuisance species such as Brazilian pepper (*Schinus terebinthifolius*), Australian pine (*Casuarinaceae* spp.), *Melaleuca* (*Melaleuca* spp.) or other similarly recognized species. In addition, ornamental, landscape or typical crop vegetation, including sod and lawn grasses, shall not be included as native vegetation.

Outstanding Florida Waters means those water bodies afforded special protection and described within F.A.C. 17-3.041, and designated under the authority of F.S. ch. 403.

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, the natural resources management division 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.

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.

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 or seawall established between existing seawalls on each immediately adjacent shoreline, with a required rock revetment adjoining the structure on the seaward (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.

Riprap means any shoreline hardening, revetment or structural alteration utilizing rock, concrete or other similar material, which alters the naturally occurring shoreline for the purpose of stabilization or erosion protection. Riprap shall not include bulkheads, seawalls or approved reinforced rock revetment habitats.

Safe upland line means a boundary line determined by the state department of natural resources (FDNR), 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 protection buffer means the protected area adjacent to and landward of the surface waters of the county as established by this division. On nonbulkheaded lots, the waterward extent of the shoreline protection buffer shall be the mean high-water line or the safe upland line, as agreed upon by the applicant. On bulkheaded lots, the waterward extension of the shoreline protection buffer shall be the established or existing bulkhead line.

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, including but not limited to supporting walls, signs, covered screened enclosures and any other covered area; provided, however, neither a fence, a permitted stormwater management system nor an elevated boardwalk shall be considered a structure for the purposes of this division.

(Code 1979, § 14-78)

Cross References: Definitions generally, § 1-2.

Sec. 62-3662. Penalty; additional remedies; restoration of disturbed areas.

Penalties for violations of this division shall be as specified in F.S. § 125.69 or F.S. ch.162, or as provided in this Code. 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, or to allow for off-site mitigation, as applicable. The director of the natural resources management division shall be responsible for reviewing and approving all restoration or mitigation plans, which shall be subject to approval by the board of county commissioners. 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.

(Code 1979, § 14-82(2))

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.

(Code 1979, § 14-77)

Sec. 62-3664. Administration.

The director of the natural resources management division, or his designee, 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.

(Code 1979, § 14-82(1))

Sec. 62-3665. Appeals.

- (a) The county local planning agency shall hear appeals relating to any

administrative decision or determination concerning implementation or application of the provisions of this division, and shall submit recommendations to the board of county commissioners for approval or denial.

(b) Such appeals shall be taken within 30 days from the date of rendition of such decisions or determination by filing with the director from which the appeal is taken and with the local planning agency a notice of appeal, specifying the grounds thereof. The director from whom the appeal is taken shall forthwith transmit to the local planning agency all the papers constituting the records upon which the action appealed from was taken. Appeal procedures shall be the same procedures as specified in section 62-507. (Code 1979, § 14-82(3))

Sec. 62-3666. General provisions.

The following provisions shall apply to all class I, II and III waters within the county:

- (1) New seawalls and bulkheads shall be prohibited along the Indian River lagoon system, except along existing canals in residential neighborhoods adjoining class III waters. Applications for permits for any seawall or bulkhead on canals adjoining class III waters shall be submitted in writing to the county office of natural resources management for consideration. All applications must meet all of the following minimum criteria:
 - a. The permitted activity shall not be immediately adjacent to or contain a shoreline within state department of environmental protection (FDEP) class I waters, FDEP class II waters, FDEP class III shellfishing areas, FDNP aquatic preserves or Outstanding Florida Waters;
 - b. On those lots where new bulkheads may be permitted, the establishment of the bulkhead shall not increase the waterward extension of the existing shoreline except to locate parallel and in line with adjacent existing and legally permitted bulkheads. New bulkheads shall also meet the avoidance, minimization and mitigation standards contained within the wetlands protection regulations (Article X, Division 4, Brevard County Code).
 - c. The applicant shall design and install the permitted bulkhead system as to provide reasonable assurance that the erosion of the abutting properties will not be accelerated by the establishment of the applicant's bulkhead.
 - d. On those lots where replacement bulkheads may be permitted and the existing bulkhead cannot be safely removed without causing structural damage to the existing residence, the waterward

extension of the new bulkhead shall meet the least waterward extension of these criteria:

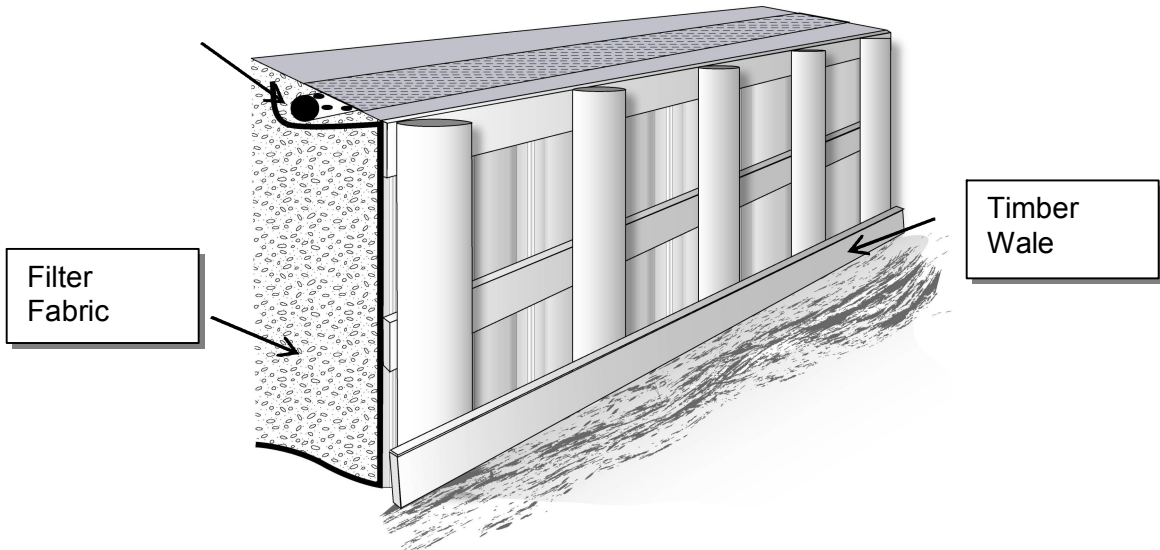
- (1) no more than twelve (12) inches from the existing bulkhead; or
- (2) shall be located parallel and in line with adjacent existing and legally permitted bulkheads; or
- (3) shall be located no more than twelve (12) inches waterward of the lot's recorded property line.

e. In addition to the design standards in Chapter 22-Article VII, Seawall Construction, Brevard County Code, the proposed bulkhead design shall meet or exceed the following minimum standards:

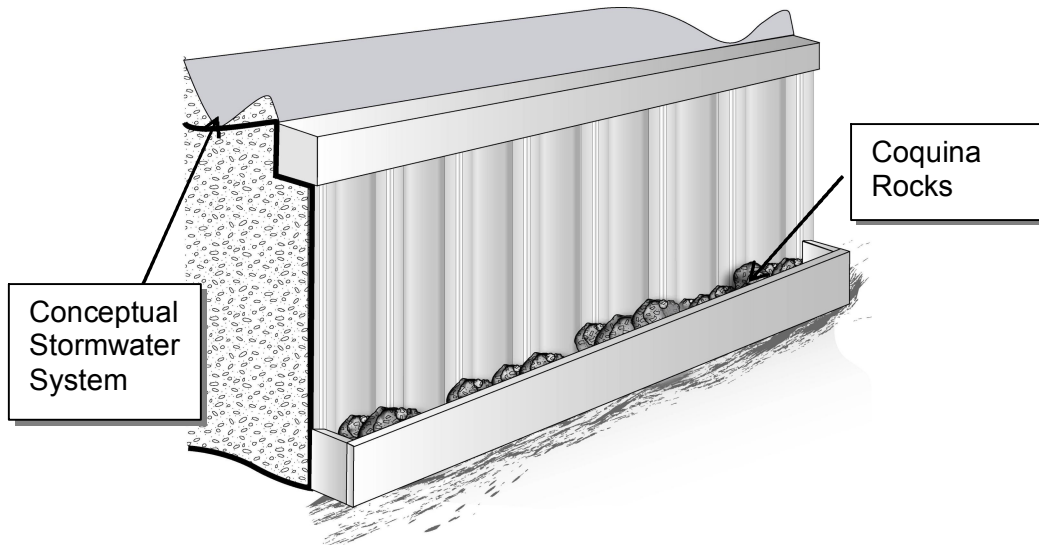
- (1) Retention of the first one inch of runoff from all surfaces that drain to the property's shoreline. Stormwater calculations and designs shall be prepared by a professional engineer registered in the State of Florida and submitted with the permit application.
- (2) Increased potential for improving water quality and habitat diversity. This criterion shall be presumed to have been met by the installation of a continuous timber wale two inches by eight inches along the entire bulkhead on the waterward side of the pilings and located at or very near the existing bottom of the canal. See Figure A for examples of these designs.
- (3) Alternative bulkhead designs may be approved by the natural resources management office when such designs clearly exceed the minimum standards established in sections 62-3666(1)(d)(1) and (2).

Figure A. Design Concepts for Canal Bulkheads

Conceptual Stormwater
System



Bulkhead with pilings and perforated pipe/pervious drainage area.



Sheet bulkhead without pilings and swale drainage.

- (2) For shorelines not within the criterion of subsection (1) of this section, hardening of the shoreline shall be allowed only when the applicant can demonstrate that erosion is causing a significant shoreline loss as recognized by the natural resources management division, pursuant to subsection (4) of this section. All requests for shoreline hardening must be submitted to and approved by the natural resources management division prior to any hardening activities. Riprap material, pervious interlocking brick systems, filter mats and other similar stabilization methods, combined with vegetation, shall be used in lieu of seawalls and bulkheads when hardening of the shoreline is approved under this subsection. For those properties on the Indian River lagoon immediately between two adjacent existing seawalls, the natural resources management division may permit reinforced rock revetment habitats, provided 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 seawall portion of the structure shall be located above the mean high-water line.
- (3) For any proposed shoreline hardening, the natural resources management division must be provided with plans, test results or other professionally accepted information that affirmatively demonstrates that any proposed shoreline hardening 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 (1)e of this section.
 - f. Adversely affect the flow of water or create a navigational hazard.
- (4) Utilizing the following minimum criteria, the natural resources management division shall assess each estuarine or riverine shoreline under application for shoreline hardening for significant shoreline loss. Shorelines must exhibit one or more of the following criteria to qualify for local approval of stabilization alternatives other than the establishment of native vegetation:
 - a. Clear and convincing evidence of increasing destructive loss of existing established native vegetation due to wave, wake or

stormwater activity;

- b. Clear and convincing evidence of properly designed, permitted and installed alternatives to shoreline hardening which have failed to stabilize the shoreline, such as but not limited to the establishment of native vegetation, gently sloping or tiered shorelines, or other similar alternatives;
- c. Clear and convincing evidence of lawfully existing permanent structures which face imminent threat of destruction from continued shoreline loss; or
- d. Clear and convincing evidence of continuous historical accelerated shoreline loss greater than one foot per year, for a period of not less than ten consecutive years.

Clear and convincing evidence shall be the responsibility of the applicant or his authorized agent. The criteria set out in this subsection shall be the minimum required. All applicants shall be subject to and responsible for obtaining all additional necessary approvals or permits, prior to local approval. State or federal approval of shoreline hardening shall not exempt the applicant from local approval or denial of a project. All appeals of decisions of the natural resources management division shall be subject to the provisions of section 62-3665.

- (5) 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. 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. 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 exempt from this subsection.
- (6) 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:
 - 1. Marinas shall not be located in approved or conditionally

approved shellfish harvesting waters or class II waters.

2. Commercial/recreational and commercial/industrial marinas shall not be located in Aquatic Preserves or Outstanding Florida Waters.
 3. 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.
- (7) 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 ordinary high-water line or the safe upland line of the Indian River lagoon.
- (8) 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 ordinary high-water line or the safe upland line of the Indian River lagoon. In those cases where there is insufficient lot depth, the septic tank and drainfield shall be a minimum of 75 feet from mean high water or the safe upland line, except where a variance has been granted by the state, or where the state allows the setback to be 50 feet and there is insufficient room to increase the setback.
- (9) Approved alteration pursuant to this division that occurs within the shoreline protection buffers shall be reviewed by the county natural resources management division. The natural resources management division 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 the natural resources management division and shall be installed by the applicant. Sediment and turbidity control methods shall be in place and maintained throughout the alteration process. One of the following erosion control methods may be used by the applicant in most circumstances. Combinations of these methods or other methods may be required depending upon site-specific characteristics:

- a. *Baled hay or straw barriers.* Bales, approximately 1.5 feet by 1.5 feet by three feet or 40 to 50 pounds in size, shall be placed in a line (end to end) that is perpendicular to the runoff flow from the alteration site. Each bale shall be firmly staked with a minimum of two stakes approximately two inches by two inches by four feet in dimension. A small amount of loose soil, of a size approximately six inches by six inches by the length of the hay bales, shall be placed by shovel and lightly compacted along the landward edge of the bales. If the baled hay or straw barrier is breached during the alteration process, the breach must be repaired immediately. It is recommended that extra bales and stakes be kept at the alteration site to make any necessary repairs.
 - b. *Silt fence.* Filter fabric, in conformance with section 985 of the specifications of the state department of transportation, shall be placed in a line that is perpendicular to the runoff flow from the alteration site. The fabric shall be firmly attached to wooden posts, two inches by four inches by four feet in size, or having a 2.5-inch diameter, spaced at a maximum distance of six feet. Posts may be positioned either vertically or canted 20 degrees toward flow direction and the alteration site.
 - c. *Vegetative buffer.* A densely vegetated buffer 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 shoreline protection buffer depth. Additional erosion control methods may be required in conjunction with approved vegetation buffers.
- (10) For structures that existed prior to the effective date of the ordinance from which this division is derived, remodeling and other types of development which do not increase the amount of impervious surfaces within or threaten the integrity of the shoreline protection buffer will be allowed.
 - (11) 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.
 - (12) Upon review, the natural resources management may authorize the removal or alteration of non-native noxious vegetative species, such as

Brazilian pepper or Australian pine, within the shoreline protection buffer, provided the allowed disturbance does not:

- a. Remove, destroy or damage existing native vegetation, wetland habitats, floodplains, required erosion control or stormwater management systems, or endangered or threatened species or their habitats;
- b. Undermine shoreline integrity or promote increased shoreline or upland erosion; or
- c. Increase sediment or nutrient loading to the adjacent water body.

(13) 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.

(14) 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.

(Code 1979, § 14-79)

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 shoreline protection buffer extending landward from the ordinary high-water line or the safe upland line as determined by the bureau of survey and mapping of the state department of natural resources, whichever the applicant prefers.
- (2) Alteration within the shoreline protection buffer other than that which is permitted under this division shall be prohibited, unless it is shown to be in the best public interest and does not adversely impact water quality and natural habitat. Acceptable uses within the shoreline protection buffer are passive recreation, hunting, fishing, fish and wildlife management, open space and nature trails, and similar uses. Development within the buffer is limited to structures for water access such as docks, boat ramps and pervious walkways and elevated minor structures.
- (3) No more than 20 percent of the lot width or 25 linear feet, whichever is greater, of any shoreline protection buffer of a project or parcel, or the offshore emergent vegetation associated with a project or parcel, may be

altered for reasonable access. 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 F.A.C. 17-302 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.
- (Code 1979, § 14-80)

Sec. 62-3668. Class II waters, Outstanding Florida Waters, aquatic preserves, conditionally approved Class III shellfishing 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 shellfishing waters and class III waters excluding existing canals within residential neighborhoods:

- (1) Along class II waters, Outstanding Florida Waters, aquatic preserves and conditionally approved class III shellfishing waters, a 50-foot shoreline protection buffer extending landward from the mean high-water line or the safe upland line as determined by the bureau of survey and mapping of the state department of natural resources, whichever the applicant prefers, shall be established.
- (2) Along class III waters, except conditionally approved class III shellfishing waters, a 25-foot shoreline protection buffer extending landward from the mean high-water line or the safe upland line as determined by the bureau of survey and mapping of the state department of natural resources, whichever the applicant prefers, shall be established.
- (3) Alteration or construction within the shoreline protection buffer other than that which is permitted under this division shall be prohibited, unless it is

shown to be in the best public interest and does not adversely impact water quality and natural habitat.

- (4) Properties shall, through the use of swales, berms, native vegetation or other appropriate methods, detain stormwater runoff prior to discharge to the surface water. A professional engineer shall design a stormwater system to retain the first one inch of runoff from impervious surfaces which drain to the shoreline. All requirements for stormwater management shall be reviewed and approved by the division of stormwater management and shall be inspected by the natural resources management division, as necessary.
- (5) Development within the shoreline protection buffer is limited to fences, docks, boat ramps, pervious walkways and elevated walkways. In addition, approved accessory uses are permitted in nonvegetated bulkheaded canals adjacent to class II and class III waters which utilize approved stormwater management techniques.
- (6) For projects or parcels without mangroves, no more than 20 percent of the lot width or 25 linear feet, whichever is greater, of any shoreline protection buffer of a project or parcel, or the offshore emergent vegetation associated with a project or parcel, may be altered for reasonable access. The remainder of the shoreline protection buffer shall be maintained in unaltered vegetation, except for noxious species, as permanent open space. This, however, shall not preclude mitigation projects, the planting of native vegetation, or the development described in applicable sections of this division within the shoreline protection buffer areas.
- (7) For projects or parcels with mangroves, alteration of mangroves is prohibited unless the applicant can demonstrate to the satisfaction of the office of natural resources management that reasonable access and development described in subsection (5) of this section cannot occur without the alteration of mangroves. If alteration is allowed by the natural resources management division, no more than ten percent or six feet, whichever is less, of the mangroves may be altered for reasonable access and development described in subsection (5) of this section. The remainder of the shoreline protection buffer shall remain unaltered, except as provided in this division for the removal of noxious species. This shall not preclude mitigation projects or the planting of native vegetation.
- (8) For residential lots platted or established by deed on the official record books of the county prior to September 8, 1988, the following shall apply: Structures may be built within the shoreline protection buffer only if it can be shown that there is insufficient lot depth to allow the development of primary and accessory structures permitted and 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 shellfishing waters, structures may be built within the landward 25 feet of the shoreline protection buffer if all other requirements of this division are met.
 - b. Within class III waters, structures may be built within the landward ten feet of the shoreline protection buffer if all other requirements of this division are met.
 - c. In the case where there is insufficient lot depth to construct a pool with its associated decking and features, an encroachment up to 720 square feet within the shoreline protection buffer shall be permitted if additional measures are taken to preserve water quality and natural habitat within the adjacent water body. These additional measures shall, at a minimum, be consistent with Chapters 17-25 and 17.302 F.A.C., as may be amended, and shall include but are not limited to: (1) the provision of a stormwater system which is capable of preventing the first inch of runoff from a 25 year, 24 hour storm from entering the surface waters, and (2) revegetation with native shoreline vegetation.
- (9) Within the shoreline protection buffer, the total amount of alteration, including all impervious surface, within the shoreline protection buffer shall be limited to 30 percent of the required shoreline protection buffer area, excluding the approved removal of non-native noxious vegetation.
- (10) A surface water protection plan must be submitted to and approved by the natural resources management division prior to the establishment of structures or uses described in subsection (8) of this section. 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 or the safe upland line.
 - b. A sketch, drawn to scale, on the survey described in subsection (10)a of this section, indicating the location and building dimensions of the structures, and any proposed alteration of the shoreline protection buffer.
 - c. A description of the type of structures proposed and the construction materials to be used.

- d. A description of how the surface water quality will be protected. The following methods may be used by the applicant in most circumstances. However, combinations of these methods or other methods may be required, depending upon site-specific characteristics:
 1. A stormwater system shall be designed by an engineer registered by the state. The stormwater system must be capable of retaining the first one inch of runoff from all impervious surfaces which drain to the shoreline. The stormwater system may be located within the shoreline protection buffer, but shall not be located or designed to require the removal of existing native shoreline vegetation within ten feet of the shoreline without approval by the county office of natural resources.
 2. A densely planted shoreline of viable native vegetation, a minimum of ten feet in width for the entire length of the shoreline, may be utilized. The types and numbers of plants must be determined and approved by the county office of natural resources on a site-specific basis, however, total ground cover must be maintained. The ground must be stabilized with mulch or similar material to protect against erosion until plant material completely covers the ground.
- (11) Dredging and filling shall not be permitted in or connected to class II waters, Outstanding Florida Waters, aquatic preserves and conditionally approved class III shellfishing waters unless the activity is clearly in the public interest, such as approved maintenance dredging on existing public navigational channels, or where dredging may improve the water quality by removing accumulated silt or improving circulation, or for maintenance of existing structures and utility crossings, or for shoreline hardening as allowed by this division.
- (12) Discharges into class II waters, Outstanding Florida Waters, aquatic preserves and conditionally approved class III shellfishing waters shall not degrade existing water quality below existing conditions, or those standards outlined in F.A.C. ch.17-3 for class II water bodies, whichever provides for better water quality.
- (13) Discharges into class III waters shall not degrade existing water quality below existing conditions, or those standards outlined in F.A.C. ch.17-3 for class III water bodies, whichever provides better water quality.
- (14) Within the shoreline protection buffer, the storage of fertilizers, pesticides, hazardous materials or other pollutants which may run off into surface

as amended by the Board of County Commissioners April 2007

waters shall be prohibited unless the storage system is an above ground vehicular fuel system meeting the requirements of Chapter 62-761 Florida Administrative Code.

(Code 1979, § 14-81; Ord. No. 02-18, § 1, 4-30-02, 5-2-03)