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Surface Water

9J-5 requirement: *Primary - 9J-5.013(1)(a)1, 4, 5; (b): (2)(a), (b)2, 4; (c)1, 3, 6*
 Secondary - 9J-5.013(2)(c)5, 8, 9

Objective 3

Improve the quality of surface waters within Brevard County and protect and enhance the natural functions of these waters.

Justification: In October 2009, the Board of County Commissioners directed staff to revise the Surface Water Objective policies to improve consistency and streamline the permitting process between the appropriate state agencies, while remaining consistent with the requirements of 9J-5.013. These proposed policy modifications regarding Objective 3 include recommendations identified during the Surface Water Working Group discussions. The group was convened in May 2008 to participate in an independently facilitated analysis and discussion of the Brevard County Surface Water Protection ordinance. Per Board direction, the group was composed of representatives from organizations representing a wide variety of interests, as well as citizen representatives from the Commission Districts. Additional staff notes are provided as necessary below.

Policy 3.1

Brevard County shall cooperate with the Florida Department of Environmental Protection (FDEP) to require small package treatment plants adjacent to surface waters to comply with existing federal, state, or regional rules and regulations, and to ensure that the necessary renovations to achieve compliance are completed in a timely manner.

Policy 3.2

Brevard County shall continue to prevent negative impacts of development in and adjacent to Class I waters by implementing and revising, as necessary, the Surface Water Protection Ordinance including the following minimum criteria:

Criteria:

- A. Maintain a two hundred (200) foot shoreline protection buffer from [the ordinary high water line](#) or mean high water 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 buffer establishment line that approximates the water/shoreline interface may be approved administratively as defined in ordinance.](#)

Justification: In general, FDEP no longer readily establishes OHWL or MHWL. The safe upland line (SUL) is easily established. However, the use of the SUL may result in the

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reduction of developable property, as in some cases it may be located well landward of the water/shoreline interface.

- B. Acceptable uses within the shoreline protection buffer are passive recreation, hunting, fish and wildlife management, open space and nature trails, and similar uses.
- C. Require discharges of any substances into Class I waters to meet or exceed applicable receiving water quality standards.
- D. Prohibit dredging and filling, except for permitted utility crossings, publicly owned recreational projects which do not degrade water quality, and necessary maintenance of existing projects.
- E. Regulate development and mining operations within the hydrologic basin of Class I waters. Prohibit mining operations within the 10-year floodplain of Class I waters.
- F. Prohibit alteration within the shoreline protection buffer unless it is in the public interest ~~or~~ and does not adversely impact water quality and natural habitat.

Policy 3.3

Brevard County shall continue to make efforts to prevent negative impacts of development in and adjacent to the Indian River Lagoon and its tributaries designated as Class II waters, Aquatic Preserves and Outstanding Florida Waters by implementing and revising as necessary, the Surface Water Protection Ordinance, including the following minimum criteria:

Criteria:

- A. Maintain a fifty (50) foot shoreline protection buffer from the ordinary high water line, mean high water line, or ~~the~~ 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 buffer establishment line that approximates the water/shoreline interface may be approved administratively as defined in ordinance.

Justification: In general, FDEP no longer readily establishes OHWL or MHWL for the Indian River Lagoon system. The safe upland line (SUL) is easily established. However, the use of the SUL may result in the reduction of developable property, as in some cases it may be located well landward of the water/shoreline interface.

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- B. ~~Except as allowable under Policies 3.3.C and 3.3.D, primary structures shall not be permitted within the surface water protection buffer. The County shall establish allowable uses within the surface water protection buffer. Stormwater management for all alterations associated with allowable uses shall be required to protect water quality of the receiving water body. No more than twenty (20) percent of the lot width or twenty-five (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 or for allowable development. Within the shoreline protection buffer, allowable development shall be limited to docks, boat ramps, pervious walkways, elevated walkways, and approved accessory uses, as set forth by the County land development regulations. Accessory uses shall be allowable only on existing bulkheaded lots utilizing required stormwater management techniques.~~
~~The remainder of the shoreline protection buffer shall be maintained in unaltered vegetation, except for noxious species, as permanent open space. This shall not preclude mitigation projects or the planting of native species.—Provisions for the alteration and/or removal of non-native invasive plants~~noxious vegetation~~, mitigation projects, and the planting of native species shall be established by the Brevard County Natural Resources Management Division.~~

Justification: This language has been modified to provide better consistency across water body classifications relative to allowable uses within the buffer. Specific allowable uses within the buffer are stricken, as these uses (not to include primary uses as indicated) will be allowable within ordinance criteria. These uses will include, but will not be limited to pools, decks, and fences.

- C. For residential lots platted or established by deed on the official record books of Brevard County prior to September 8, 1988, an alternative to the fifty (50) foot shoreline protection buffer described above shall be available for those lots which have insufficient lot depth to construct a primary structure ~~or pool with its associated decking and features~~. In the case where there is insufficient lot depth to construct a primary structure, this alternative shall allow the shoreline protection buffer to be reduced to twenty five (25) feet if additional measures are taken to preserve water quality and natural habitat within the adjacent surface water body. ~~In the case where there is insufficient lot depth to construct a pool with its associated decking and features, an encroachment of up to 720 square feet within the shoreline protection buffer shall be available if additional measures are taken to preserve water quality and natural habitat within the adjacent surface water body.—~~These additional measures ~~should~~shall,

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at a minimum, prevent the first inch of stormwater runoff from entering surface waters; and may include, but not be limited to, a stormwater retention system or native shoreline revegetation. Where applicable, stormwater management measures shall be consistent with DEP 62-25, as amended and FS 373, as amended.~~be consistent with DEP 17-25 and 17.302 F.A.C. and may include but are not limited to 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 surface waters and revegetation with native shoreline vegetation. Within the shoreline protection buffer, development shall be limited to those activities outlined in 3.4 (B).~~

Justification: This language has been modified to provide better consistency across water body classifications relative to allowable uses within the buffer. Specific allowable uses within the buffer are stricken, as these uses (not to include primary uses as indicated) will be allowable within ordinance criteria. These uses will include, but will not be limited to pools, decks, and fences. Further, the stormwater requirement has been clarified to ensure consistency with applicable regulations.

D. Within the shoreline protection buffer the maximum amount of impervious surface is thirty (30) percent.

Justification: Repositioned former Policy 3.3.G to 3.3.D for contextual ease.

DE. Prohibit shoreline alteration other than that allowed ~~for reasonable access or approved accessory uses~~by ordinance, unless the alteration is in the public interest and does not adversely impact water quality, natural habitat, and adjacent shoreline uses.

EF. Prohibit channelization, dredging and filling, and impoundment of natural waters of the State unless the activity is clearly in the public interest and does not adversely impact water quality, natural habitat, and adjacent shoreline uses. Dredging shall not be permitted in or connected to Class II Waters, Outstanding Florida Waters (OFWs), Aquatic Preserves, areas that contain ten percent (10%) seagrass or more, and conditionally approved shellfish harvesting waters unless the activity is a federal navigation project, in the public interest, such as approved maintenance dredging of existing public or private navigational channels, or where dredging may improve water quality by removing accumulated silt or improving circulation, or for maintenance of existing structures and utility structures and utility crossings, or for shoreline hardening as allowed by this element.

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FG. Prohibit discharges of any substances below ambient water quality standards.

~~G. Within the shoreline protection buffer the maximum amount of impervious surface is thirty (30) percent.~~

Policy 3.4

Brevard County shall continue to prevent negative impacts of development in and adjacent to Class III waters (except Outstanding Florida Waters and Aquatic Preserves) along the St. Johns River and Indian River Lagoon and its tributaries by implementing and revising as necessary, the Surface Water Protection Ordinance including the following minimum criteria:

Criteria:

- A. A twenty five (25) foot shoreline protection buffer from the ordinary high water line, mean high water line, or the safe upland line as determined or approved by the FDEP Bureau of Survey and Mapping shall be established. In lieu of an approved ordinary high water line, mean high water line, or safe upland line, an alternative buffer establishment line that approximates the water/shoreline interface may be approved by the director.
- B. Except as allowable under Policies 3.4.C and 3.4.D, primary structures shall not be permitted within the surface water protection buffer. The County shall establish allowable uses within the surface water protection buffer. Stormwater management for all alterations associated with allowable uses shall be required to protect water quality of the receiving water body. No more than twenty (20) percent of the lot width or twenty-five (25) linear feet, whichever is greater, of any shoreline protection buffer of a project, parcel, or the offshore emergent vegetation associated with a project or parcel may be altered for a reasonable access or for allowable development. Within the shoreline protection buffer, allowable development shall include docks, boat ramps, pervious walkways, elevated walkways, and approved accessory uses, as set forth by the County land development regulations. Accessory uses shall be allowable only on existing bulkheaded lots utilizing required stormwater management techniques. The remainder of the shoreline protection buffer shall be maintained in unaltered vegetation, except for noxious species, as permanent open space. This shall not preclude mitigation projects or the planting of native species. Provisions for the alteration and/or removal of non-native invasive plants, noxious vegetation, mitigation projects, and

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the planting of native species shall be established by the ~~Brevard County Office of Natural Resources~~.

- C. For residential lots platted or established by deed on the official record books of Brevard County prior to September 8, 1988, an alternative to the twenty five (25) foot shoreline protection buffer described above along Class III waters shall be available for those lots which have insufficient lot depth to construct a primary structure ~~or pool with its associated decking and features~~. In the case where there is insufficient lot depth to construct a primary structure, this alternative shall allow the shoreline protection buffer to be reduced to fifteen (15) feet if additional measures are taken to preserve water quality and natural habitat within the adjacent surface water body. ~~In the case where there is insufficient lot depth to construct a pool with its associated decking and features, an encroachment of up to 720 square feet within the shoreline protection buffer shall be available if additional measures are taken to preserve water quality and natural habitat within the adjacent surface water body.~~ These additional measures ~~should~~shall, at a minimum, prevent the first inch of stormwater runoff from entering surface waters; and may include, but not be limited to, a stormwater retention system or native shoreline revegetation. Where applicable, stormwater management measures shall be consistent with DEP 62-25, as amended and FS 373, as amended.~~be consistent with DEP 17-25 and 17.302 F.A.C. and may include but are not limited to 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 revegetation with native shoreline vegetation. Within the shoreline protection buffer, development shall be limited to those activities outlined in this policy.~~

Justification: This language has been modified to provide better consistency across water body classifications relative to allowable uses within the buffer. Specific allowable uses within the buffer are stricken, as these uses (not to include primary uses as indicated) will be allowable within ordinance criteria. These uses will include, but will not be limited to pools, decks, and fences. Further, the stormwater requirement has been clarified to ensure consistency with applicable regulations.

- D. Prohibit shoreline alteration other than that allowed ~~for reasonable access or approved accessory uses~~by ordinance, unless it is in the public interest; or prevents or repairs erosion; ~~or and~~ does not adversely impact water quality, natural habitat and adjacent shoreline uses.

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E. Except for properties on existing residential manmade canals, the maximum amount of impervious surface within the shoreline protection buffer is thirty (30) percent.

Justification: This language has been modified to provide better consistency across water body classifications relative to allowable uses within the buffer. Stormwater management is required for all buffers.

EF. Prohibit discharges of any substances below ambient water quality standards.

Policy 3.5

All dredging activities must be done with effective turbidity controls. Where turbidity screens or similar devices are used, they should be secured and regularly monitored to avoid manatee entrapment.

Policy 3.6

Vertical seawalls and bulkheads shall be prohibited along the Indian River Lagoon system, excluding man-made canals. Hardening Stabilization of the estuarine shoreline shall be allowed to protect structures and real property from both gradual and accelerated erosion only when erosion is causing a serious (significant) threat to life or property. Rip-rap material, pervious interlocking brick systems, filter mats and other similar stabilization methods combined with vegetation shall be used in lieu of vertical seawalls and bulkheads when hardening stabilization of the shoreline is approved. Living shorelines shall be encouraged as a preferred shoreline stabilization method.

Policy 3.7

New man-made canals connected to the Indian River Lagoon system are prohibited. The expansion (widening and/or deepening) of existing ditches, drainage right-of-ways, drainage easements and stormwater facilities connected to the Indian River Lagoon to accommodate navigation shall be prohibited unless the activity is in the best public interest and does not adversely impact the Indian River Lagoon. Maintenance dredging on existing navigational channels, private or public canals, or within existing marinas is allowable upon review by the County, unless it is in the public interest, as defined in the glossary, and does not adversely impact the Indian River Lagoon to accommodate boat traffic shall be prohibited unless the activity is an approved maintenance dredging on existing public navigational channels, private or public canals, or an existing marina's maintenance dredging.

Justification: Grammatical and content clarification.

Policy 3.8

Septic tanks and drain fields shall be set back at least one hundred (100) feet from the shoreline of the Indian River Lagoon. When deemed necessary to meet State-

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mandated water quality standards, Brevard County may establish setbacks from the shoreline of the Indian River Lagoon for septic tanks and drainfields. Such setbacks shall at a minimum, be in accordance with F.S. 381.0065(4), as may be amended. In those cases where there is insufficient lot depth to meet County-established setbacks more stringent than those established by State statute, ~~except where a variance has been granted by the state, the septic tank and drainfield shall be placed the maximum distance possible from the edge of the lagoon, a minimum of seventy five (75) feet~~ septic tanks and drainfields shall be located in accordance with F.S. 381.0065(4), as may be amended.

Justification: Policy modification recognizes the significant advancement of waste water treatment/septic tank/drain field technology since the implementation of this policy.

Policy 3.9

~~By 2002,~~ Brevard County will undertake a continue to support spoil island assessment projects to determine which islands are valuable bird rookery areas. These islands will then should be designated as such, and protected during nesting season. Other islands will should be designated as recreational areas. ~~This~~ Any study will be coordinated with any spoil island management plans designed and implemented by other agencies, such as the Florida Inland Navigational District.

Policy 3.10

Brevard County shall continue to work with the St. Johns River Water Management District (SJRWMD), FDEP, and Indian River Lagoon Program (IRLP) and other appropriate agencies in developing appropriate water quality standards for estuarine waters within the Indian River Lagoon.

Policy 3.11

Brevard County shall continue to support and implement its programs for plugging free-flowing artesian wells, with highest priority being given to those adjacent to the Lagoon.

Policy 3.12

Brevard County should cooperate with the SJRWMD in the District's aquatic weed program for the St. Johns River.

Policy 3.13

Brevard County strongly supports the designation of the Indian River Lagoon from SR 405 north to the County line as an Aquatic Preserve.

Policy 3.14

The creation of new spoil islands should be discouraged. Existing spoil islands should be retained in public ownership and utilized as bird rookeries and recreational

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areas. In addition, restoration efforts such as wetland vegetation planting, upland vegetation planting, and refuse removal that could foster biological production, control erosion and enhance the habitat, aesthetic and recreational values of the island should be undertaken.

Policy 3.15

By 2013, the County shall establish appropriate protective measures along conveyance systems and tributaries of the St. Johns River and Indian River Lagoon to meet State and Federal water quality standards.

Justification: The year 2013 represents the next EAR-based amendment cycle. Further, Brevard County is currently involved in the State-mandated development of Basin Management Action Plans (BMAPs) to address the Federally mandated Total Maximum Daily Load water quality allocations. The BMAP for the Indian River Lagoon should be completed by 2013 with identified loading allocations, improvements required, and costs.