

Brevard County Surface Water Protection Ordinance Working Group
October 8, 2008 Meeting Minutes

Working Group Members Present

1. Mark Bowes, Alternate Representative, Home Builders and Contractors Association
2. Jim Durocher, Primary Representative, Brevard Nature Alliance
3. Pete Kaiser, Primary Representative, District 2
4. Troy Rice, Primary Representative, District 3
5. Suzanne Valencia, Primary Representative, Partnership for a Sustainable Future
6. Steven Webster, Primary Representative, Florida Marine Contractors Association
7. Andy Wolter, Primary Representative, District 4
8. Maureen Rupe, Primary Representative, District 1

Working Group Members Absent

1. Jim Egan, Primary Representative, Marine Resources Council
2. Don George, Alternate Representative, Brevard Nature Alliance
3. Franck Kaiser, Primary Representative, Home Builders and Contractors Association
4. Beth McMillen, Alternate Representative, Marine Resources Council
5. Ana Nesbitt, Alternate Representative, Florida Marine Contractors Association
6. Joanna Stone, Primary Representative, Marine Industries Association
7. George Wilson, Primary Representative, District 5

Support Staff

Tim Franta, Facilitator

Ernest Brown, Director, Natural Resources Management Office (NRMO)

Amanda Elmore, Supervisor, Environmental Permitting, NRMO

Darcie McGee, Environmental Permitting, NRMO

Liz McDuffee, Administrative Assistant, NRMO

Madeline Donato, Administrative Secretary, NRMO

Members of the Public

Paul Pettit

Jim Staylor

Call to Order

At 9:07 AM the meeting was called to order with a quorum of seven.

General Public Comment

There was no public comment.

Minutes Review and Approval

The 9/24/08 minutes were approved with 100% consensus.

Handouts

- 10/8/08 Agenda

- 9/24/08 draft minutes
- Reasonable/Buffer Definitions
- 1/10/08 marine contractors memo

Shoreline Protection Buffer

Public Comment

Jim Staylor gave a presentation (Attachment A) and distributed a handout (Attachment B) about the current shoreline hardening regulations. Some of his concerns included:

- Why must the home owner show destructive loss or imminent failure before he or she can do something?
- Accessory uses should be allowed whether the lot is bulkheaded or not.
- The requirement for demonstrating shoreline loss of greater than one foot per year for 10 consecutive years is excessive.
- A sandy beach with a revetment should be allowed.
- “Accessory uses” could be called “supplemental uses” for non-bulkheaded lots.

Reasonable Access Definition

The working group approved changing “Reasonable Access” to “Buffer Access” at the last meeting and proposed definitions for Buffer Access, Temporary Access and Permanent Access. Staff made minor modifications to the definitions to be consistent with the code language and reviewed the draft with the County Attorney’s Office (CAO). The CAO approved the concept and suggested that the group wait until the code is completely rewritten before finalizing the language. The working group tentatively approved the staff’s verbiage with 100% consensus and agreed to put this item in the “parking lot” to be integrated into the code later. (The items that are underlined were added during the meeting.)

DEFINITIONS

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 buffer by means of allowable uses.

Allowable uses will be defined in the ordinance.

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

Avoidance/minimization/restoration required. To be detailed in ordinance.

Permanent Access in the shoreline protection buffer means access to permitted structures or other allowable uses by means of pervious or elevated walkways

Avoidance/minimization/restoration required. Construction standards to be detailed in ordinance.

The working group also agreed to delete Sections 62-3667(3), 62-3668(6) and 62-3668(7), but after further discussion, decided to retain the information in Sections 62-3668(6) and 62-3668(7) as summarized below.

Section 62-3667(3)

Deleted.

Sec. 62-3667. Class I waters

~~(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.~~

Section 62-3668(6)

The information in Section 62-3668(6), which is related to projects or parcels without mangroves, is included in the Comp Plan; therefore, it cannot be deleted. However, the information could be clarified by adding that approved shoreline erosion protection systems and temporary access are not subject to the provisions as set forth in 62-3668(6). There was also discussion on the reference to “offshore emergent vegetation” and whether the County had any jurisdiction over them. It was noted that this reference is included in the Comp Plan so it would need to be changed in the Comp Plan before it could be deleted from the Surface Water Protection Code. The following was tentatively approved by the working group. (The items that are underlined were added during the meeting.)

Sec. 62-3668. Class II waters, Outstanding Florida Waters, aquatic preserves, conditionally approved Class III shellfishing waters and Class III waters.

(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 buffer access. The remainder of the shoreline protection buffer shall be maintained in unaltered vegetation, except for noxious species, as permanent open space. Approved shoreline protection systems and temporary access are not subject to the provisions of this section. 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.

(a) Temporary access shall be limited to minimum alteration(s) necessary to accomplish the allowable use and shall require an approved restoration plan.
(locate this language where appropriate)

(b) Permanent use

Public Comment

Jim Staylor stated that “shoreline protection system” must be defined.

Paul Pettit asked for the definition of a man-made canal.

NRMO staff replied that a man-made canal is cut through uplands. Section 62-3668 excludes man-made canals and is in conflict with the Comp Plan. This issue will be discussed later.

Section 62-3668(7)

After further discussion, the group decided to modify Section 62-3668(7) and move it to a new exemption section in the Surface Water Protection Code. The goal is to establish minimum standards that, if not met, would require a permit. Currently the County is more restrictive with regard to how much can be cleared (i.e., no more than six feet or 10%, whichever is less) to obtain reasonable access. Several members of the group also noted that this section requires NRMO staff to make subjective decisions by including statements such as "... is prohibited unless the applicant can demonstrate to the satisfaction of the office of natural resources management that..." The following was tentatively approved by the working group. (The items that are underlined were added during the meeting. Strike-outs show the existing code.)

~~(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.~~

(7) For projects or parcels with mangroves, alteration of mangroves is prohibited except for allowable buffer access of no more than ten percent or six feet, whichever is less. All allowable uses shall demonstrate avoidance and minimization alteration. 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.

Insert new code sections here addressing buffer access:

- Allowable uses
- Construction standards
- Avoidance/minimization
- Restoration

Alteration of Mangroves Definition

The alteration of mangroves is also being addressed by the Land Clearing, Landscaping and Tree Protection (LLTP) Task Force. The LLTP code states that "the trimming, pruning, maintenance or removal of mangroves shall be consistent with applicable federal

or state regulations.” It is also addressed in the Surface Water Protection Code in Section 62-3668 (7). The group discussed deferring to state and LLTP regulations, but there was some concern that state and LLTP regulations could change without appropriate consideration of the effect on the Surface Water Protection Ordinance. It was also noted that removal of native vegetation in the buffer is in the LLTP code, but it does not need to stay there. The group agreed that Section 62-3668 (7) was not clear and should be rewritten and placed in a new exemption section.

Public comment

Paul Pettit stated that he met with the Florida Department of Environmental Protection (FDEP) and the Army Corp of Engineers (ACOE) recently and was told that Brevard County is not a local government that has requested a delegation. The FDEP is the delegated authority for alteration of mangroves for the ACOE. The County can request a delegation and become the sole enforcer of the protection of mangroves. Mr. Pettit wanted to know how the County could trump the state if the FDEP controls the mangroves. It is confusing to have so many regulations. If Brevard County is not a delegated County, it should defer to the FDEP.

Ernie Brown responded that under home rule, everything is permitted unless it is expressly prohibited by the state. The regulation of wetlands is an example of this. Localities can determine what an applicant can do in a wetland, but the definition of a wetland and how it is mitigated is the purview of the FDEP. It is not expressly forbidden by the state for localities to regulate the protection of mangroves. The County can be more stringent than the state, but it cannot be less stringent.

Native Vegetation

The group reviewed the current Native Vegetation definition in the Surface Water Protection Code and compared it to the Native Species definition that was recently approved by the LLTP Task Force. After a discussion, the group approved using the LLTP Task Force’s definition with the following two modifications: change the definition name from “native species” to “native vegetation” and change “species” to “plant species.” Staff was asked to relay the changes to the LLTP Task force for review and possible incorporation into the LLTP code for the sake of consistency.

Landscaping, Land Clearing & Tree Protection Code Definition

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.

Summary of Progress

- Tentatively approved proposed staff language for Buffer Access.
- Approved language related to Alteration of Mangroves and referred the draft language to staff and the County Attorney’s Office for review.
- Agreed that an exemption section needed to be added to the code and that the modified 62-3668(7) should be moved to it.

- Agreed that consistency was needed between the Surface Water Working Group and the Land Clearing, Landscaping and Tree Protection Task Force. Clearing native vegetation does not require a Surface Water Permit, but it does require a Small Scale Land Clearing Permit per the LLTP code.
- Approved the Native Vegetation definition.

Open Items

- Asked staff to find the appropriate location for the following language:
Temporary access shall be limited to minimum alteration(s) necessary to accomplish the allowable use and shall require an approved restoration plan.
(10/8/08 meeting)
- Asked staff to draft “permanent access” language that adds a restriction for a maximum width of four feet unless required by the American Disabilities Act.
(10/8/08 meeting)
- Asked staff to communicate the changes to the Native Vegetation definition to the LLTP Task Force and ask for their concurrence for consistency’s sake. (10/8/08 meeting)
- Review and discuss with working group: permitted versus allowable. (previous meeting)
- Staff list of permitted uses in buffer (previous meeting)
- Definition of impervious (previous meeting)
- Staff list of accessory uses (previous meeting)
- Ensure buffer is consistent with landscaping code (land clearing versus buffer clearing) (previous meeting)
- Restoration after removal is not addressed in code (previous meeting)
- Shoreline restoration: make sure it comes under future topic of hardening (previous meeting)

Next meeting

The next meeting will be held on Wednesday, October 22nd in the NRMO conference room, Building A, second floor, suite 219, at the Government Center in Viera. The Government Center is located at 2725 Judge Fran Jamieson Way, Viera, FL 32940.

Information on the Surface Water Protection Working Group can be found at <http://natres.brevardcounty.us/SurfaceWaterWorkingGroup.cfm>

The meeting was adjourned at 12:01 PM.

ATTACHMENT A

PRESENTATION BY JIM STAYLOR, MEMBER OF THE PUBLIC



U S Army Corps of
Engineers
Sacramento District

Nationwide Permit Summary

33 CFR Part 330; Issuance of Nationwide
Permits - March 19, 2007

45. Repair of Uplands Damaged by Discrete Events. This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district

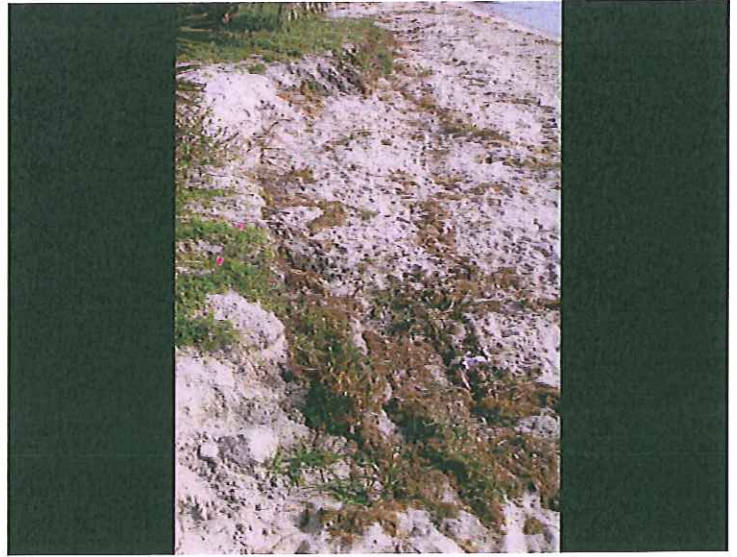
Sec. 62-3666. (3)

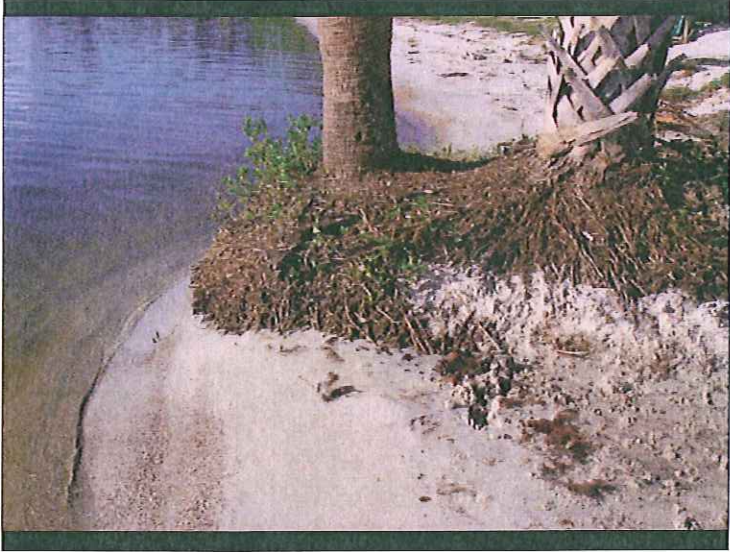
(3) For any **shoreline hardening** modifications within the Shoreline Protection Buffer, the natural resources management division must be provided with plans, test results or other professionally accepted information that affirmatively demonstrates that any proposed **shoreline hardening** modification 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 Sec 62-3668. (11).
- f. Adversely affect the flow of water or create a navigational hazard.

Sec. 62-3668. (11)

Dredging and filling shall not be permitted in or connected to class II 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, or for the restoration of areas within the Shoreline Buffer Zone damaged by storms, floods, waves or other events, provided the restoration does not exceed the surveyed property line or the ordinary high water mark that existed before the damage occurred.





Sec. 62-3666. (2)

(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.....**

(We need to be **Proactive**, not **Reactive**)

Change to:

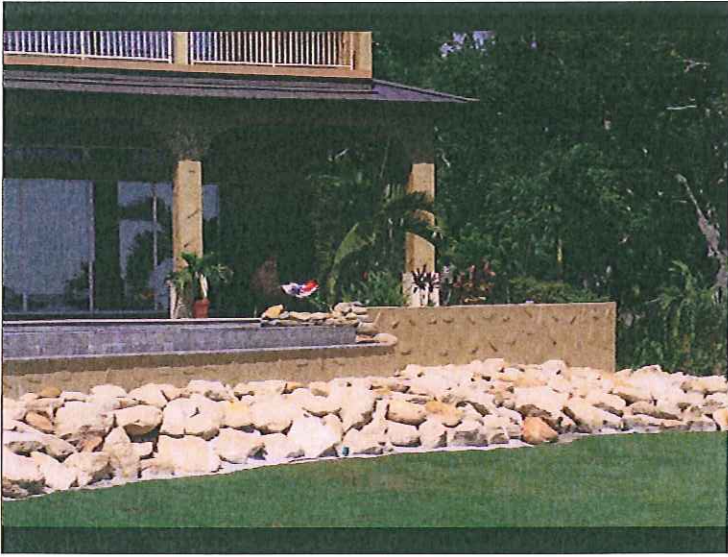
Modifications within the Shoreline Protection Buffer not within the criterion of subsection (1) of this section, shall be allowed only when the applicant can demonstrate that the modification shall have the potential benefit of erosion control, or for property protection, or provides a beneficial effect to the Shoreline Protection Buffer, or for accessories uses, or is in the public interest.....

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 or the construction of upland revetments are approved under this subsection...

Sec. 62-3668. (4a)

- 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.....**
- 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.**





Accessory uses shall include but not be limited to upland revetments, decorative coquina, landscaping, irrigation systems, decks and all impervious surfaces within the shoreline protection buffer requiring a county building permit.



Sec. 62-3666. (2)

(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.....**

(We need to be *Proactive*, not *Reactive*)

Change to:

Modifications within the Shoreline Protection Buffer not within the criterion of subsection (1) of this section, shall be allowed only when the applicant can demonstrate that the modification shall have the potential benefit of erosion control, or for property protection, or provides a beneficial effect to the Shoreline Protection Buffer, *or for accessories uses*, or is in the public interest.....

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 **or the construction of upland revetments** are approved under this subsection...

Sec. 62-3666. (4a)

- 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.....**
- 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.**

Accessory uses shall include but not be limited to upland revetments, decorative coquina, landscaping, irrigation systems, decks and all impervious surfaces within the shoreline protection buffer requiring a county building permit.