

Brevard County Surface Water Protection Ordinance Working Group
October 22, 2008 Meeting Minutes

Working Group Members Present

1. Jim Durocher, Primary Representative, Brevard Nature Alliance
2. Pete Kaiser, Primary Representative, District 2
3. Beth McMillen, Alternate Representative, Marine Resources Council
4. Ana Nesbitt, Alternate Representative, Florida Marine Contractors Association
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. Mark Bowes, Alternate Representative, Home Builders and Contractors Association
2. Jim Egan, Primary Representative, Marine Resources Council
3. Don George, Alternate Representative, Brevard Nature Alliance
4. Franck Kaiser, Primary Representative, Home Builders and Contractors Association
5. Troy Rice, Primary Representative, District 3
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)

Darcie McGee, Environmental Permitting, NRMO

Liz McDuffee, Administrative Assistant, NRMO

Members of the Public

Paul Pettit

Jim Staylor

Handouts

- Surface Water Protection Ordinance draft with changes incorporated from previous meetings
- 10/8/08 draft minutes

Call to Order

At 9:06 AM the meeting was called to order with a quorum of seven.

General Public Comment

Jim Staylor

Mr. Staylor asked to defer speaking until his items were being discussed by the work group.

Paul Pettit

Mr. Pettit stated that he has contacted all four counties that have received delegations from the State for the Mangrove Protection Rule. Mr. Pettit stated that Brevard County is not a delegated county so it has no authority to regulate mangroves. Mr. Pettit also discussed his current violation case with regard to alleged clearing of native vegetation.

Ernie Brown

Mr. Brown stated that all local mangrove-specific programs were abolished after the Mangrove Protection Rule took effect. However, the current Land Clearing, Landscaping and Tree Protection Ordinance has sections that apply to all native vegetation, including mangroves. The question is whether that regulation qualifies as a “mangrove-specific” program. The regulation question also needs to be evaluated with regard to local land use within mangroves. The Surface Water Protection Ordinance regulates what can be done within mangroves.

Pete Kaiser

Mr. Kaiser stated that the Department of Environmental Protection issues a dock permit that allows a path to be cleared through mangroves if the affected area is less than 1,000 sq. ft. It is a self-permitting process if all of the criteria are met. Mr. Kaiser felt that there should be allowances in place for exceptions like this without the hierarchy of bureaucracy.

Steven Webster

Mr. Webster stated that if the current Florida Department of Environmental Protection (FDEP) standards were used, the process would be simplified. Mr. Webster moved to use the current FDEP regulations for the Surface Water Protection Working Group’s purposes. At this time, there was no second.

Minutes Review and Approval

The 10/8/08 minutes were approved with 100% consensus.

Review of Surface Water Protection Draft Ordinance

Public Comment

Jim Staylor

Mr. Staylor suggested that the group consider wording to the effect that alteration of mangroves will be done in accordance with State statute. The work group discussed whether a state statute could be referenced with a qualifier stating something such as, “as effective on January 1, 2008.” A qualifier would ensure that if the statute got more lenient, the earlier, more stringent regulations would still apply. Staff told the work group that the only way to ensure that regulations don’t change is to obtain delegation from the State.

Paul Pettit

Mr. Pettit stated that the existing ordinance states that anything addressed by FDEP or St. Johns River Water Management District (SJRWMD) can’t be made more restrictive unless authority is delegated.

Work Group discussion – alteration of mangroves

The following motion was made by Steven Webster and seconded by Pete Kaiser: Mangrove alteration shall be in compliance with the Mangrove Trimming and Preservation Act, as implemented through Florida Administrative Code _____. The

motion was approved with 100% consensus. Staff will put a link to the Mangrove Trimming and Preservation Act on the Surface Water Protection Work Group web site. It was also noted that the Landscaping, Land Clearing and Tree Protection Ordinance addressed the clearing of native vegetation in general and the Surface Water Protection Ordinance addresses clearing of native vegetation in the buffer, so both groups should coordinate through staff to address items that should be consistent in both documents.

Hardening definition

Staff recalled that the previous discussion regarding the definition of hardening was focused on alteration within the Shore Protection Buffer, not of the shoreline. The ordinance doesn't address shoreline protection systems within the buffer (upland). Pete Kaiser asked whether there were provisions to address emergency situations. Staff replied that there are no provisions in the current ordinance and that providing more flexibility to allow technology to drive the solutions would be beneficial to the homeowner. The work group felt that Hardening was a limiting term and that it could be replaced with the term, Shoreline Stabilization. Staff would need to change all "hardening" references in the code to "shoreline stabilization."

Public comment

Jim Staylor

Mr. Staylor suggested eliminating the word "shoreline" since the definition does not just apply to the shoreline, but also to the buffer area. Also, the group might want to change "similar structures to "other approved methods" or "other methods."

Paul Pettit

Mr. Pettit asked staff if shoreline hardening was addressed by the FDEP, would the homeowner still need to come to the county. Staff replied that the homeowner would need to come to the County if the buffer is affected.

Shoreline stabilization definition

The group reached 100% consensus to replace the existing hardening definition with the following shoreline stabilization definition: Shoreline stabilization means alteration within the shoreline protection buffer from its natural state for the purpose of minimizing erosion utilizing riprap material, interlocking brick systems, rock revetments, seawalls and bulkheads, vegetation, or other allowable methods. The group also noted that it could come back to "for the purpose of minimizing erosion" if it is determined to be limiting.

Erosion definition

The group reviewed erosion definitions in the Comp Plan and the Surface Water Protection Ordinance. Pete Kaiser stated that, in the event of storms, licensed contractors need the ability to put back what was there before the storm. The group noted that the current erosion definition does not address storm events and discussed different ways to address gradual, normal, accelerated and artificial erosion in the definition. The group reached 100% consensus on the following definition:

Erosion means the wearing away of land including shoreline or side slopes 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.

The group also discussed changing “the wearing away of shoreline or side slopes” to “the wearing away of land within a shoreline buffer.” A consensus vote was taken regarding asking a County attorney to verify if the definition includes the entire buffer (since that is not exactly what the Comp plan says) and whether “shoreline or side slopes” could be replaced with “land.” Six members voted yes and one member (Steven Webster) was neutral.

Recommendation for the Board of County Commissioners (BOCC)

The group agreed to recommend to the BOCC that “gradual and imperceptible” be deleted from the erosion definition in the Comp Plan because erosion is not always gradual or imperceptible.

Impervious surface definition

The group reached 100% consensus to defer the discussion on the definition of impervious surface until staff brings back the changes pertaining to the impervious definition in the Evaluation and Appraisal Report (EAR) for the Comp Plan.

Private docks definition

The group questioned why the term, private docks, was defined. Docks are addressed in Class III waters, but private docks are not referenced. The group also discussed the requirement that private docks “shall not be utilized for the purpose of producing, or as an inducement to producing, income.” Residential docks are already limited to two slips and the rest of the homeowner’s lot is restricted by zoning regulations. Staff will check with the Zoning Department with regard to income producing restrictions on private docks. It appears the intent is to prevent leasing out slips to commercial entities. The group discussed renting private dock space and that it is another way to provide some public access to the water. Beth McMillen wanted to know if “residential” was used in the code instead of “private.” Staff agreed to search the code to find out. Staff also stated that zoning has a dock ordinance that it is revising and staff will get a copy for the group. Pete Kaiser suggested using the Comp Plan definition of dock. It was also noted that “pier” is not defined in the Comp Plan. The group discussed that a pier does not have boat berths and is used for fishing or viewing, not docking boats. At the request of the group, staff will bring back a draft definition of pier. The group reached 100% consensus to replace the ordinance’s dock definition with the definition in the Comp Plan.

Summary of progress – consensus items (all meetings - *items from the last meeting are in italics*)

1. *Mangrove alteration shall be in compliance with the Mangrove Trimming and Preservation Act as implemented through Florida Administrative Code.*
2. *Shoreline stabilization means alteration within the shoreline protection buffer from its natural state for the purpose of minimizing erosion utilizing riprap material, interlocking brick systems, rock revetments, seawalls and bulkheads, vegetation, or other “allowable” methods. (Replaces definition of hardening.)*
3. *Erosion means the wearing away of land, including shoreline and side slopes, 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.*

4. *Replace ordinance definition of dock with Comp Plan definition: Dock means a fixed or floating structure, including moorings, used for the purpose of berthing buoyant vessels either temporarily or indefinitely.*
5. Tentatively approved proposed staff language for Buffer Access, including temporary and permanent access.
6. Approved language related to Alteration of Mangroves
7. Agreed that an exemption section needed to be added to the code and that the modified 62-3668(7) should be moved to it.
8. 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.
9. Approved the Native Vegetation definition.
10. Agreed that the "Brevard County Water Line" be defined as 0.6 feet in the Indian River Lagoon. Also agreed to replace "Mean High Water Line" references with "Brevard County Water Line" if legally possible.
11. Agreed to delete "excluding existing canals within residential neighborhoods" from the first paragraph in section 62-3668 because it conflicts with the Comp Plan.
12. Deleted section 62-3667(3) and modified sections 62-3668(6) and 62-3668(7).

Open items (all meetings - *items from the last meeting are in italics*)

1. *Staff to ask legal if the proposed erosion definition includes the entire buffer and if "shoreline or side slopes" could be replaced with "land."*
2. *Defer impervious surface discussion until receive EAR definition.*
3. *Get new proposed dock ordinance from Zoning.*
4. *Staff to draft definition of pier.*
5. *Staff to add a link to the Mangrove Trimming and Preservation Act to the Surface Water web page.*
6. *Staff to update draft ordinance with latest approved changes.*
7. *Staff to search code for references to residential (as opposed to private).*
8. Referred the alteration of mangroves draft language to staff and the County Attorney's Office for review.
9. 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. 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.
11. Review and discuss with working group: permitted versus allowable.
12. Staff list of permitted uses in buffer
13. Definition of impervious
14. Staff list of accessory uses
15. Ensure buffer is consistent with landscaping code (land clearing versus buffer clearing)
16. Restoration after removal is not addressed in code

BOCC Recommendations (all meetings - *items from the last meeting are in italics*)

1. *Recommend to the County Commission to change the Comp Plan by deleting “gradual and imperceptible” out of the definition of erosion.*
2. Recommend that “Mean High Water Line” references in the Comp Plan be deleted because the DEP no longer uses this for certifications.

Next meeting

The next meeting will be held on Wednesday, November 5th 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 12:00 PM.