

**Brevard County Surface Water Protection Ordinance Working Group**  
September 10, 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. Ana Nesbitt, Alternate Representative, Florida Marine Contractors Association
5. Troy Rice, Primary Representative, District 3
6. Suzanne Valencia, Primary Representative, Partnership for a Sustainable Future
7. Steven Webster, Primary Representative, Florida Marine Contractors Association
8. Andy Wolter, Primary Representative, District 4

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. Joanna Stone, Primary Representative, Marine Industries Association
6. George Wilson, Primary Representative, District 5
7. Open, District 1

Support Staff

Tim Franta, Facilitator

Amanda Elmore, Supervisor, Environmental Permitting, NRMO

Darcie McGee, Environmental Permitting, NRMO

Liz McDuffee, Secretary, NRMO

Madeline Donato, Secretary, NRMO

Members of the Public

Jim Staylor

**Call to Order**

At 9:15 AM the quorum was reached (seven members) and the meeting officially called to order.

**Public Comment**

Jim Staylor discussed section codes 3666 (2), Shoreline Hardening, and 3668 (3) Land Alteration or Construction Within the Shoreline Protection Buffer. About 75% of the residents that live near the Indian River Lagoon area are affected by these regulations and they need to be addressed. Jim Staylor also presented a slide show on revetments.

**Minutes Review and Approval**

The minutes were approved with 100% consensus after the quorum agreed to change “the goal is to move the measuring starting point as far waterward as feasible” to “the goal is to move the measuring starting point more waterward than the safe upland line.”

## **Handouts**

Darcie McGee handed out the following documents:

- FDEP response to NRMO correspondence regarding Mean High Water Line (MHL).
- Definitions (with Structure and Accessory Use added to the list)
- Nationwide Permit Summaries (If anyone wants a full copy, please contact Darcie.)

## **Mean High Water Line Discussion**

Pete Kaiser stated that upland retaining walls should be discussed when the group gets to hardening. Andy Wolter stated that trenching behind mangroves is a strategy that should be discussed when the group gets to Shoreline Protection Buffer.

Darcie McGee clarified that the Ordinary High Water Line (OHWL) refers to non-tidal waters and that the Mean High Water Line refers to tidal waters. Darcie also stated that if anything but the Safe Upland Line is used, the developer or landowner could be impeding waters of the state.

The Indian River Lagoon System uses 1.1 feet as the Mean High Water Line, but it is not absolute. Darcie McGee suggested checking with the Florida Department of Environmental Protection (FDEP). The County currently uses 1.1 feet.

The group discussed that the point of the Safe Upland Line (SUL) is to determine where to measure the buffer from. They also discussed whether the point was to measure from the water up or from the Safe Upland Line back and determined that it should be from the SUL back. The group members asked why they couldn't use the MHWL but call it something else and then measure the buffer to that line. It would not affect DEP permits or other permits. The "Brevard County Water Line" could be used for buffer measurements. Revetments would go through the state. Darcie will ask the County Attorney's Office if we can add a new water line into the code. If anyone in the group can come up with a better name, let Darcie know. The DEP won't certify the MHWL any more, but it is still referenced in the Comp Plan and this scrivener's error needs to be corrected.

## **Public Comment**

Jim Staylor would like for the MHWL to be kept as low as possible because if it is not, many lots could become unbuildable. Brevard County has a more stringent buffer zone regulation than any other county in the state.

## **Brevard County Water Line**

The quorum, with 100% consensus, agreed that the "Brevard County Water Line" be defined as 0.6 feet in the Indian River Lagoon.

## **Lake Washington and Lake Poinsett**

The Safe Upland Line for Lake Washington is 15.3 feet. Darcie McGee will distribute copies of the Lake Washington ordinance before the group discusses Lake Washington. The Lake Poinsett's SUL is generally 13.0 feet. The County is silent on Lake Poinsett.

### **Section 62-3668**

The working group unanimously agreed to delete "excluding existing canals within residential neighborhoods" from the first paragraph in section 62-3668 because it conflicts with the Comp Plan.

### **Code enforcement vs. fees**

The group discussed reducing the fee for surface water permits and increasing the fines for violations. The current fine is triple the permit fee if the lot owner or developer starts the work without a permit. Darcie McGee stated that NRMO would entertain the idea of certifying contractors and letting them be exempt for permits unless the work is outside of the standard.

### **Reasonable Access**

Reasonable Access is not defined in the regulations and is not used in the Comp Plan. The group discussed different ways that Reasonable Access could be defined.

- Access for construction
- Access for personal use
- Narrow path to water with turnaround
- Area of native vegetation that is disturbed

Darcie McGee suggested that the group think about the definition for Reasonable Access as homework for the next meeting.

### **Public Comment**

Jim Staylor brought up Paul Pettit's reasonable access. There was a brief discussion but staff did not want to continue the discussion because it is an active code enforcement case and Paul Pettit was not present.

### **Summary of Progress**

- Delete "excluding existing canals within residential neighborhoods" from section 62-3668.
- Replace Mean High Water Line references with Brevard County Water Line if legally possible.

Issues (as captured by Tim Franta)

1. Upland Retaining Walls
2. Trenching Behind Mangroves (Fence)
3. Brevard Water Line (Name)
  - a. Define
    - i. 0.6' NGVD estuary lagoon
4. Change to Comp Plan MHW?
  - a. Cleanup Reference FAC?
5. Increase fines to lower fees

- a. Fines should be appropriate contractor vs. owner.
6. Adopt web-based exemption notification procedures for allowable work

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Shoreline Protection Buffer

- a. Public comment X
- b. Purpose - define
- c. Reasonable access
- d. Alteration of Mangroves
- e. Native vegetation
- f. Public comment

**Public Comment**

None

**Next meeting**

The next meeting will be held on Wednesday, September 24<sup>th</sup> in the NRMO conference room, Building A, second floor, suite 219, at the Government Center in Viera. The working group will address the Reasonable Access definition and spend 30minutes each on Alteration of Mangroves and Native Vegetation.

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

The meeting was adjourned at 11:55 AM.