

ORDINANCE 2011 -

AN ORDINANCE OF BREVARD COUNTY, FLORIDA, AMENDING CHAPTER 62, ARTICLE X, DIVISION 3, CODE OF ORDINANCES OF BREVARD COUNTY, FLORIDA, RELATING TO SURFACE WATER PROTECTION, SPECIFICALLY AMENDING SECTIONS 62-3661-DEFINITIONS; 62-3662-PENALTY; ADDITIONAL REMEDIES; RESTORATION OF DISTURBED AREAS; 62-3663-PURPOSE AND INTENT; 62-3664-ADMINISTRATION; 62-3665-APPEALS; 62-3666-GENERAL PROVISIONS; 62-3667-CLASS I WATERS; AND 62-3668-CLASS II WATERS, OUTSTANDING FLORIDA WATERS, AQUATIC PRESERVES, CONDITIONALLY APPROVED CLASS III SHELLFISHING WATERS AND CLASS III WATERS: CREATING SECTIONS 62-3669-EXEMPTIONS; 62-3670-APPEALS; AND 62-3671-PENALTY; ADDITIONAL REMEDIES; RESTORATION OF DISTURBED AREAS; PROVIDING FOR THE INTERPRETATION OF CONFLICTING PROVISIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AREA ENCOMPASSED AND AN EFFECTIVE DATE.

WHEREAS on May 20, 2008, the Board of County Commissioners (Board) adopted Resolution 08-110, creating a stakeholder Working Group (Group) to review the Surface Water Protection regulations and make recommendations for improvement; and

WHEREAS the Group participated in 15 facilitated discussions during 2008 and 2009 and successfully reached consensus on major issues, such as water quality protective measures, construction and development in the surface water protection buffer, and shoreline stabilization; and

WHEREAS the Group's obligations had expired in March 2010, the Board adopted Resolution 11-015, reconvening the Group; and

WHEREAS The Group met for two additional meetings to finalize their recommendations for ordinance modifications consistent with the adopted Comprehensive Plan amendments discussed above; and

WHEREAS in order to remain compliant, new code provisions must be approved to implement the adopted Comprehensive Plan language.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA that:

SECTION 1. Sec. 62-3661. Definitions. Code of Ordinances of Brevard County, Florida, is amended to read as follows:

For the purpose of this division, certain terms and words are defined as follows:

Accessory ~~use-structure~~ means a building, ~~or~~ structure ~~or use~~ as defined in, and consistent with, ~~article Chapter 62, Article~~ VI of this chapter. Accessory uses shall include but not be limited to all impervious surfaces within the ~~shoreline~~surface water 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~~ Preserves means those sovereignty lands established by the state and managed under the provisions set forth in ~~Chapters F.S. chs.~~ 253 and 258, F.S., as amended.

Best public interest means public projects which clearly demonstrate a net benefit to the public, as determined by the ~~board~~Board of ~~county~~County commissionersCommissioners, 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.

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 surface water protection buffer by means of allowable uses.

Buffer Establishment Line means a surveyed contour line along a shoreline from which the landward surface water protection buffer may be identified. The line is established along the approximate land-water interface of a shoreline. The elevation of 0.9 feet N.G.V.D. 1929 shall be used to define the line along the Indian River Lagoon system. The use of this line is exclusive to Brevard County for the sole purpose of establishing the surface water protection buffer and infers no jurisdictional or property boundaries.

Bulkhead and seawall mean a manmade shoreline wall, breakwater or encroachment, excluding ~~riprap~~shoreline stabilization as defined herein, 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~~ Chapter 62-302, F.A.C., as amended~~ch.17-3.~~

Class II waters means waters designated by the state for shellfish propagation and harvesting as determined by ~~the FDEP state department of environmental regulation~~ and defined ~~within~~ Chapter 62-302, F.A.C., as amended~~ch.17-3.~~

Class III ~~shellfishing-shellfish harvesting~~ areas means those areas within ~~class-Class III~~ waters designated suitable for shellfish harvesting by ~~the-FDEP state department of natural resources under in Chapter 5L-1, F.A.C., as amended-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 ~~countyCounty~~, except:

- (1) Those designated as ~~class-Class I~~ or ~~class-Class II~~ waters, ~~class-Class III~~ shellfish areas, Outstanding Florida Waters, and ~~aquatic-Aquatic preserves-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-Class III~~ waters by ~~the-FDEP 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 ~~countyCounty~~ 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-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.

Director means the director of the Brevard County Natural Resources Management Office or designee.

~~*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.~~

Dock means a fixed or floating structure, including moorings, used for the purpose of berthing buoyant vessels either temporarily or indefinitely.

Elevated structure 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 and to allow the growth and maintenance of vegetation.

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

FDEP means the Florida Department of Environmental Protection, or its successor agency.

~~*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) Chapter F.A.C. ch.38F-41, F.A.C., as amended, (the Florida Substance List); or
- (2) Title 40 of the Code of Federal Regulations ~~part~~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) Chapter 62-730, F.A.C., as amended~~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, paver stones, 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.

Living shoreline means erosion management techniques, such as the strategic placement of plants, stone, sand, and other structural and organic materials, that are used primarily in areas with low to moderate wave energy, and are designed to mimic natural coastal processes.

Mangrove means any specimen, or any portion of any specimen, living or dead, of the species *Avicennia germinans* (black mangrove), *Laguncularia racemosa* (white mangrove), or *Rhizophora mangle* (red mangrove) ~~or *Conocarpus erectus* (buttonwood).~~

Marina means all boating facilities with three or more wet and/or dry slips (consistent with current County definition). A marina is a facility or structure, which provides mooring, docking, anchorage, fueling, repairs, launching, or other related services for watercraft. Private boat docks associated with single family lots are exempt from this category. ~~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 exclusively serving subdivisions, condominiums, duplexes, or private organizations having three to 30 slips, inclusive of other multi-family developments. No fueling, ~~wastewater pumpout~~ or repair facilities ~~are~~ shall be associated with these marinas.
2. *Commercial/recreational marina* means public or private facilities which provide dockage and other related amenities not exclusively associated with a subdivision, condominium, duplex or other multi-family development. 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, including commercial boat building, ship repairs or construction, and commercial seafood harvesting and processing. ~~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~~ NRMO as subject to ~~section~~ 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.~~

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.

NRMO means the Brevard County Natural Resources Management Office or its successor agency.

Outstanding Florida Waters means those water bodies afforded special protection and described within Chapter 62-302, F.A.C., as amended 17-3.041, and designated under the authority of ~~F.S. ch. Chapter~~ 403, F.S., as amended.

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 County comprehensive Comprehensive planPlan, the natural resources management division~~ NRMO 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 County~~ or other acceptable public entity or agency.

Passive Recreation means recreational uses where very minimum alteration of vegetation, topography or other native feature is necessary for the enjoyment of the site amenities. Activities which are considered passive include, but are not limited to, hiking, bicycling, nature observation, camping, picnicking, non-motorized recreation and sports, and archaeological or historic preservation.

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.

Pier means a fixed or floating structure used to provide over-water pedestrian access from the land for recreational purposes including walking, fishing, swimming, or observing. The berthing of buoyant vessels, either temporarily or indefinitely, is not permitted.

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~~ bulkheads 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.

Retaining wall means a structure that holds back soil or rock from a building, structure, or area; prevents downslope movement or erosion; or provides support for vertical or near-vertical grade changes.

~~*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) FDEP, bureau~~ Bureau of ~~survey~~ Survey and ~~mapping~~ 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.~~

Shoreline stabilization means alteration of the shoreline or the surface water protection buffer from its natural state for the purpose of minimizing erosion utilizing riprap material, interlocking brick systems, rock revetments, vegetation, living shorelines, retaining structures located in uplands, or other allowable methods.

SJRWMD means the St. Johns River Water Management District, or its successor agency.

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.~~

Surface water protection buffer means the protected area adjacent to and landward of the surface waters of the County as established by this division. On non-bulkheaded lots, the waterward extent of the surface water protection buffer shall be the Buffer Establishment Line or the safe upland line, as agreed upon by the applicant. Additionally, mean high water line or ordinary high water line may be used if the applicant can provide documentation that the line and associated elevation is specifically approved by FDEP. On bulkheaded lots, the waterward extension of the surface water protection buffer shall be measured from the face of the existing bulkhead.

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

~~(Code 1979, § 14-78)~~

~~———— Cross References: Definitions generally, § 1-2.~~

SECTION 2. Sec. 62-3662. Penalty; additional remedies; restoration of disturbed areas.

Code of Ordinances of Brevard County, Florida, is amended to read as follows:

Sec. 62-3662. ~~Penalty; additional remedies; restoration of disturbed areas~~ Shall be reserved.

~~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))~~

SECTION 3. Sec. 62-3663. Purpose and intent. Code of Ordinances of Brevard County, Florida, is amended to read as follows:

It is the purpose and intent of this division to improve the quality of surface waters within the countyCounty, 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-Class~~ Class I, II and III waters, Outstanding Florida Waters and Aquatic Preserves.
(Code 1979, § 14-77)

SECTION 4. Sec. 62-3664. Administration. Code of Ordinances of Brevard County, Florida, is amended to read as follows:

The ~~director-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-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-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))

SECTION 5. Sec. 62-3665. Appeals. Code of Ordinances of Brevard County, Florida, is amended to read as follows:

Sec. 62-3665. Appeals. Shall be reserved.

~~(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))

SECTION 6. Sec. 62-3666. General provisions. Code of Ordinances of Brevard County, Florida, is amended to read as follows:

The following provisions shall apply to all ~~class-Class~~ Class I, II and III waters, Outstanding Florida Waters, Aquatic Preserves, and conditionally approved Class III shellfish harvesting waters within the ~~county~~ County:

(1) All alterations within the surface water protection buffer shall be reviewed and/or permitted by the County unless exempt pursuant to Section 62-3669.

(2) Projects within the surface water protection buffer requiring a Surface Water permit shall provide a restoration plan for temporary impacts. Temporary impacts shall be limited to the minimum alteration(s) necessary to accomplish the allowable use. The review, approval, and inspection of the temporary impact restoration plan shall be included as part of the Surface Water

permit. Temporary impacts to wetlands shall only be allowed in accordance with Chapter 62, Article X, Division 4.

(3) Any alteration as allowed under this Division, including redevelopment, within the surface water protection buffer shall require stormwater management so as not to degrade the receiving water body water quality. Properties shall, through the use of swales, berms, perforated pipe, native vegetation, or other appropriate methods; convey and detain stormwater runoff prior to discharge to the surface water.

- a. For activities in the surface water protection buffer, stormwater management shall include, but not be limited to:
 - i. The provision of a stormwater system designed, signed, and sealed by a Professional Engineer registered in the state of Florida, which is consistent with Chapter 62-302 F.A.C., as amended, and is capable of preventing the first inch of runoff from a 25-year, 24-hour storm, from all impervious surfaces that drain to the property's shoreline from entering surface waters; or
 - ii. A densely planted shoreline of viable native vegetation, a minimum of ten feet in width for the entire length of the shoreline. The types and numbers of plants, ground coverage, and stabilization shall be consistent with Appendices B and C of Chapter 62, Article XIII, Division 2 (Landscaping, Land Clearing & Tree Protection), as amended, or as allowed by the Director.

With the exception of activities that are exempt in accordance with Section 62-3669, all requirements for stormwater management shall be reviewed, approved, and inspected by the County, as necessary.

- b. All discharges into surface waters shall not degrade existing water quality below existing conditions, or those outlined in Chapter 62-302, F.A.C., as amended.
- c. All stormwater management systems shall be maintained for functionality in perpetuity.
- d. Stormwater management retrofitting in accordance with this subsection, shall be required for all back lot drainage at the time of the allowable activity`.
- e. Stormwater management systems shall demonstrate avoidance and minimization of impacts to native vegetation.
- f. The Director may consider alternative stormwater management systems that utilize established low impact development best management practices.

(4) Shoreline stabilization and bulkhead projects completed under a County, and State as applicable, permit may be located with the surface water protection buffer. Any shoreline project involving bulkheads, revetments, or retaining walls shall be implemented by a marine contractor licensed in the State of Florida, or by a person recognized by the Director as qualified in construction in the marine environment. Alternatively, projects may be completed by a property owner/builder provided that the project is designed, signed, and sealed by a Professional Engineer registered in the State of Florida. Shoreline stabilization projects completed primarily by means of vegetation may be implemented by a person recognized by the Director as qualified in the evaluation of environmental systems and vegetative resources, such as a biologist, environmental scientist, or landscaping professional.

(5) 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.

(6) All alteration and development shall demonstrate avoidance and minimization of environmental impacts in accordance with Chapter 62, Article X, Division 4.

(7) Only vegetation identified in Appendices B and C of Chapter 62, Article XIII, Division 2 (Landscaping, Land Clearing & Tree Protection), as amended, or as allowed by the Director, shall be planted in the surface water protection buffer. Non-Native Invasive or Undesirable plant species may be removed from the surface water protection buffer in the manner authorized in Section 62-4334(4), as amended.

~~(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 shall 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).~~

(8) All applications for bulkheads and reinforced rock revetment habitats shall meet the following minimum criteria, as applicable:

a. For lots along Class I waters, Class II waters, Class III shellfish harvesting areas, Aquatic Preserves, Outstanding Florida Waters, and Class III waters that are not in residential neighborhood canals, the following shall apply:

i. New bulkheads shall be prohibited.

ii. For those properties on the Indian River Lagoon system immediately between two adjacent existing bulkheads, NRMO may permit a reinforced rock revetment habitat, provided that 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 bulkhead portion of the structure shall be located above the mean high-water line.

- iii. The permitted system design shall provide reasonable assurance that the erosion of the abutting properties will not be accelerated by the establishment of the applicant's bulkhead.
- iv. The permitted system shall meet the wetlands avoidance, minimization, and mitigation standards contained within Chapter 62, Article X, Division 4.
- v. The repair and replacement of legally existing bulkheads shall be allowable in accordance with (8)(c) of this subsection.
- vi. Stormwater management shall be provided in accordance with Section 62-3666(3).
- vii. Applications for permits along the Indian River Lagoon system shall be submitted to NRMO for a Surface Water permit. The applicant shall also obtain permits from State and Federal agencies, as applicable.

b. For lots along existing canals in residential neighborhoods, the following shall apply:

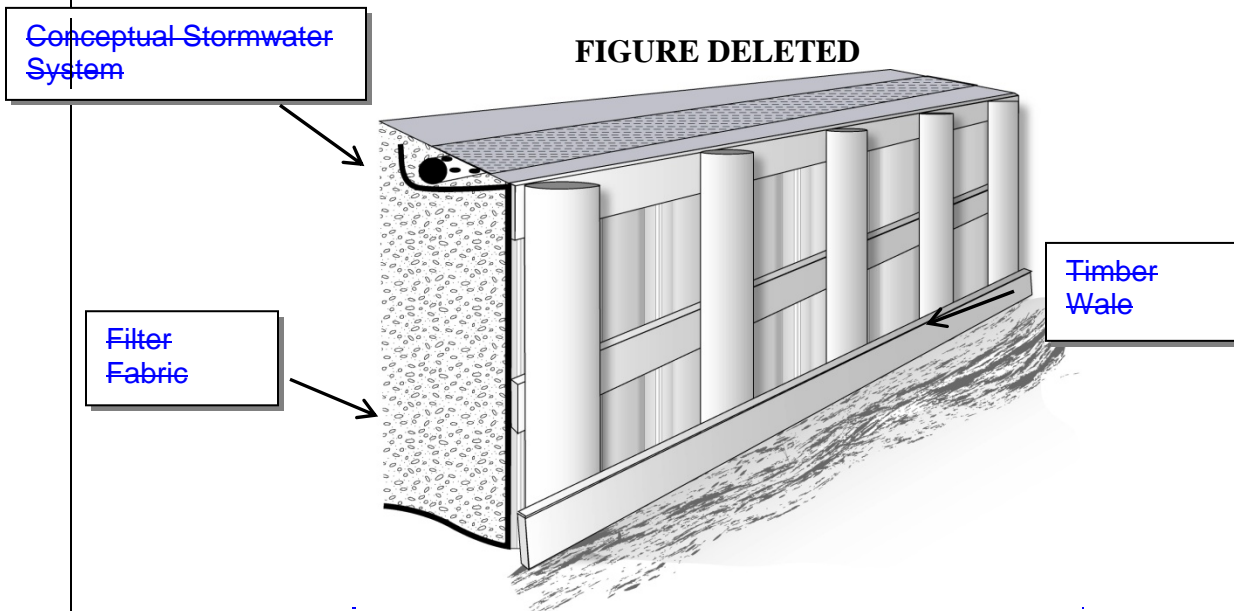
- i. The establishment of new bulkheads shall be permissible.
- ii. New bulkheads shall not increase the waterward extension of the existing shoreline except to locate parallel and in line with adjacent existing and legally permitted bulkheads. The Director may consider alternative designs that compensate for shoreline irregularities.
- iii. New bulkheads shall meet the avoidance, minimization and mitigation standards contained within the wetlands protection regulations (Article X, Division 4, Brevard County Code, as amended).
- iv. The permitted bulkhead system design shall provide reasonable assurance that the erosion of the abutting properties will not be accelerated by the establishment of the applicant's bulkhead.
- v. The repair and replacement of legally existing bulkheads shall be allowable in accordance with (8)c of this subsection.
- vi. Stormwater management shall be provided in accordance with Section 62-3666(3).

- vii. Applications for permits for any bulkhead on a canal shall be submitted to the Brevard County Building Department for a combined Building/Surface Water permit.
- c. The repair and replacement of bulkheads may be permitted in accordance with the following:
 - i. The repair and replacement of legally existing bulkheads on the Indian River Lagoon system shall be allowable, except where the existing structure is less than 50 percent functional per original constructed design and a reinforced rock revetment habitat is not permissible.
 - ii. If permissible, the repair and replacement of bulkheads on the Indian River Lagoon system shall require the establishment of a reinforced rock revetment habitat.
 - iii. If an existing bulkhead cannot be removed due to safety, structural, or other environmental concerns, the waterward extension of the new bulkhead, where practicable, shall meet the least waterward extension of these criteria:
 - a) Shall not exceed a maximum of eighteen (18) inches from the existing waterward bulkhead face, except where otherwise permitted by FDEP.
 - b) Shall be located parallel and in line with adjacent existing and legally permitted bulkheads.
 - c) A bulkhead shall not extend further than 48 inches into a canal as recorded in the public records.
 - iv. Stormwater management shall be provided in accordance with Section 62-3666(3).
 - v. For the repair and replacement of a bulkhead on a residential canal meeting all of the following criteria, NRMO shall review and approve only the required stormwater management system, and a Surface Water permit shall not be required:
 - a) The restoration of a bulkhead at its previous location or immediately upland of or within 18 inches waterward of its previous location, as measured from the face of the existing bulkhead to the face of restored bulkhead.
 - b) No filling can occur except in the actual restoration of the bulkhead.

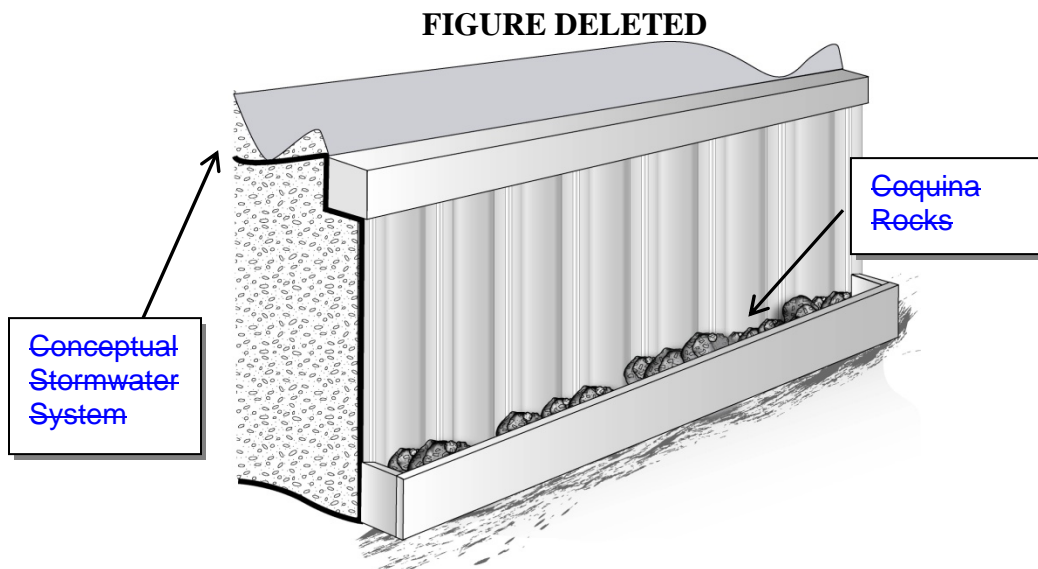
c) No construction shall be undertaken without necessary ownership or leasehold interest, especially where private and public ownership boundaries have changed as a result of natural occurrences such as accretion, reliction, and natural erosion.

c) This exemption shall be limited to bulkheads that are 50 percent functional per original constructed design.

Figure A. Design Concepts for Canal Bulkheads



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.~~

(9) For shorelines where bulkheads and reinforced rock revetment habitats are prohibited, shoreline stabilization shall be allowed to protect structures and real property from both gradual and accelerated erosion. A County Surface Water permit for shoreline stabilization shall be obtained prior to any stabilization activities.

- a. Living shorelines shall be a preferred shoreline stabilization technique.
- b. Riprap material, rock revetments, pervious interlocking brick systems, filter mats, vegetation, and other allowable methods may be used as stabilization methods within the surface water protection buffer. The following standards shall be implemented unless the State provides alternative project-specific construction criteria:
 - i. Material shall be natural or clean (free from reinforcing rods and other debris).
 - ii. Rock size shall be one to three feet in diameter.
 - iii. Slope shall be no steeper than two feet horizontal to one foot vertical.
 - iv. Filter fabric shall be installed.
 - v. Navigation shall not be impeded.
- c. If a revetment restoration or replacement project meets all of the following criteria, NRMO shall approve the required stormwater management system under an environmental review; however, a County Surface Water permit shall not be required:
 - i. A SJRWMD or FDEP permit or exemption has been issued.

- ii. No filling can occur except in the actual restoration of the revetment.
- iii. The project will not require wetland impacts or the removal of native vegetation.
- iv. No construction shall be undertaken without necessary ownership or leasehold interest, especially where private and public ownership boundaries have changed as a result of natural occurrences such as accretion, reliction, and natural erosion.
- v. This exemption shall be limited to functioning revetments.

(310) For any proposed shoreline ~~hardening~~stabilization, ~~the NRMO natural resources management division~~ must be provided with plans, test results or other professionally accepted information that affirmatively demonstrates that any proposed shoreline ~~hardening~~stabilization 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 (48)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.~~

(11) During an emergency as declared by the Brevard County Board of County Commissioners, shoreline stabilization may be completed without a permit from NRMO. All work shall be accomplished in accordance with the criteria contained within this division. An after-the-fact permit at the standard fee shall be obtained from NRMO within 90 days of the end of the declared emergency. All applicants shall be subject to and responsible for obtaining all additional necessary Federal, State, and local permits.

(512) New navigation canals connected to the Indian River ~~lagoon-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, except when in the best public interest. 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. Maintenance of Existing 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 permitted upon review.

(613) 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:
 - 1i. Marinas shall not be located in approved or conditionally approved shellfish harvesting waters or class II waters so as to substantially and materially have a negative impact on these waters.
 - 2ii. Commercial/recreational and commercial/industrial marinas shall not be located in Aquatic Preserves or Outstanding Florida Waters so as to substantially and materially have a negative impact on these waters.

3iii. 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.

(714) For lots platted or established by deed on the official record books of the ~~county~~ County after April 3, 1989, septic tanks and drainfields shall be set back at least 100 feet from the Buffer Establishment Line, or the safe upland, mean high water, or ordinary high water line as determined by the FDEP Bureau of Survey and Mapping, whichever the applicant prefers~~ordinary high water line or the safe upland line of the Indian River Lagoon.~~

(815) For lots with no existing septic system and drainfield platted or established by deed on the official record books of the ~~county~~ County before April 3, 1989, septic tanks and drainfields shall be set back at least 100 feet from the Buffer Establishment Line, or the safe upland, mean high water, or ordinary high water line as determined by the FDEP Bureau of Survey and Mapping, whichever the applicant prefers~~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 Buffer Establishment Line, or the safe upland, mean high water, or ordinary high water line as determined by the FDEP Bureau of Survey and Mapping, whichever the applicant prefers~~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. Advanced wastewater treatment or advanced secondary treatment shall be required for any septic tank and drainfield system within 100 feet of the Indian River Lagoon.

(916) Approved alteration pursuant to this division that occurs within the ~~shoreline~~surface water protection buffers shall be reviewed by ~~the NRM~~county natural resources management division. When a State permit is neither required nor obtained, he~~natural resources management division~~ NRMO 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~~ NRMO, 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:~~ Erosion and sedimentation control measures may include:

- a. Best Management Practices as outlined in the *Florida Stormwater, Erosion, and Sedimentation Control Inspectors Manual*, 2005, FDEP and Florida Department of Transportation, as amended; and as required by Chapter 62-25, F.A.C., as amended.
 - b. A densely vegetated buffer in accordance with Chapter 62, Article XIII, Division 2, Appendices B and C, as amended, 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 surface water protection buffer depth. Additional temporary erosion control methods may be required during construction in conjunction with approved vegetation buffers.
-
- ~~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.~~

~~(1017)~~ For structures and impervious areas that existed prior to ~~the effective date of the ordinance from which this division is derived~~ September 8, 1988, and exceed the allowable impervious impact criteria established herein, remodeling and other types of development which do not increase the amount of impervious surfaces within or threaten the integrity of the shoreline surface water protection buffer will be allowed. Proposed redevelopment may occur in the existing vertical envelope or may be relocated within the surface water protection buffer to achieve a net impact reduction. At a minimum, staff will assess the following mitigating factors:

- a. The applicant shall not increase the amount of impervious surfaces within the surface water protection buffer, regardless of location within the buffer.
- b. New impervious areas shall be located parallel with, or landward of, the waterward-most pre-existing impervious areas.
- c. Stormwater management in accordance with Section 62-3666(3).

~~(1118)~~ The release of petroleum or hazardous materials into ~~class~~ Class I, II and III waters, ~~aquatic~~ Aquatic preserves Preserves, Outstanding Florida Waters, and designated stormwater systems shall be prohibited.

~~(12) Non Native Invasive or Undesirable plant species may be removed from the shoreline protection buffer in the manner authorized in Section 62-4334(4).~~

~~(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.~~

~~(1419)~~ 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)~~

SECTION 7. Sec. 62-3667. Class I waters. Code of Ordinances of Brevard County, Florida, is amended to read as follows:

The following regulations shall apply to development in and adjacent to ~~class~~ Class I waters:

(1) There shall be a 200-foot shoreline surface water protection buffer extending landward from the ordinary high- water line, mean high water line, or 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 line that approximates the water/shoreline interface may be approved by the Director ~~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~~surface water 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. ~~Aacceptable~~Allowable uses within the ~~shoreline~~surface water protection buffer are passive recreation, hunting, fishing, fish and wildlife management, open space and nature trails, and similar uses. Development within the surface water protection buffer is limited to structures for water access such as docks, boat ramps, ~~and~~pervious walkways, and elevated minor structures.

(3) No more than ~~20-30~~ percent of ~~the lot width or 25 linear feet, whichever is greater,~~ of any shoreline ~~surface water~~ 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 ~~elass~~Class I waters shall not degrade existing water quality below existing conditions, or those outlined in Chapter 62-302, F.A.C. 17-302, as amended, for ~~elass~~Class I water bodies.

(5) Dredging or filling of ~~elass~~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 ~~elass~~Class I waters. No commercial borrow pits or mining operations shall be permitted within the ten-year floodplain of ~~e~~Class I waters.

(7) The criteria contained in this section do not supersede the floodplain protection criteria set forth in Chapter 62, Article X, Division 5. (Code 1979, § 14-80)

SECTION 8. Sec. 62-3668. Class II waters, Outstanding Florida Waters, aquatic preserves, conditionally approved Class III shellfishing waters and Class III waters. Code of Ordinances of Brevard County, Florida, is amended to read as follows:

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

The following regulations shall apply to development in and adjacent to ~~elass~~Class II waters, Outstanding Florida Waters, ~~aquatic~~Aquatic ~~preserves~~Preserves, conditionally approved ~~elass~~Class III shellfishing ~~ing~~ harvesting waters, and ~~elass~~Class III waters ~~excluding existing canals within residential neighborhoods~~:

(1) Along ~~elass~~Class II waters, Outstanding Florida Waters, ~~aquatic~~Aquatic ~~preserves~~Preserves and conditionally approved ~~elass~~Class III shellfishing ~~ing~~ harvesting waters, a 50-foot ~~shoreline~~surface water protection buffer extending landward from the Buffer Establishment Line,

or the ordinary high water line, mean high-water line, or the safe upland line as determined by the FDEP bureau-Bureau of survey-Survey and mapping-Mapping of the state department of natural resources, whichever the applicant prefers, shall be established.

(2) Along class-Class III waters, except conditionally approved class-Class III shellfishing harvesting waters, a 25-foot shorelinesurface water protection buffer extending landward from the Buffer Establishment Line, or the ordinary high water line, mean high-water line, or the safe upland line as determined by the FDEP bureau of survey-Survey and mMapping of the state department of natural resources, whichever the applicant prefers, shall be established.

(3) Except as allowable under Section 62-3668(7), primary structures shall not be allowed within the surface water protection buffer. Alteration or construction of accessory structures is allowable within the shorelinesurface water protection buffer provided that:

- a. Stormwater management is provided in accordance with Section 62-3666(3); and
- b. Impervious areas do not exceed 30 percent of the required buffer area, except for properties on existing residential canals; and
- c. The alteration occurs in accordance with all other applicable federal, state, and local regulations.

Alteration or construction other than that which is permitted-allowed 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) 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. All alteration shall demonstrate avoidance and minimization of surface water protection buffer impacts, including the location of the alteration within the most landward portion of the buffer, as practicable. The remainder of the shorelinesurface water protection buffer shall be maintained in unaltered vegetation, except for non-native invasive plants as defined in Section 62-4332, as~~

~~amended noxious species, as permanent open space. Approved shoreline stabilization 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-surface water~~ 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.~~

~~(5) For projects or parcels with mangroves, mangrove alteration shall be in compliance with applicable federal and state regulations.~~

~~(6) Temporary access shall be limited to the minimum alteration necessary to accomplish the allowable use and shall require an approved restoration plan in accordance with Section 62-3666(2).~~

~~(87) For residential lots platted or established by deed on the official record books of the county County prior to September 8, 1988, the following shall apply: a primary Structures structure may be built within the shoreline-surface water protection buffer, as indicted below, only if it can be shown that there is insufficient lot depth to allow the development of a primary and accessory structures permitted and as defined by the existing zoning classification of the property, and if all other alternatives and remedies are not applicable.~~

- a. Within ~~class-Class~~ II waters, Outstanding Florida Waters, ~~aAquatic preserves Preserves,~~ and conditionally approved ~~class-Class~~ III shellfishing ~~harvesting~~ waters, ~~primary~~ structures may be built within the landward 25 feet of the ~~shorelinesurface water~~ protection buffer if all other requirements of this division are met.
- b. Within ~~class-Class~~ III waters, ~~primary~~ structures may be built within the landward ten feet of the ~~shorelinesurface water~~ protection buffer if all other requirements of this division are met.
- c. ~~Except for properties on existing residential manmade canals, the total amount of impervious area shall not exceed 30 percent of the required buffer area. In the case where there is insufficient lot depth to construct a pool with its associated decking and features, an eneroachment 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:(1) 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 (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.~~

~~(108) A surface water protection plan must be submitted to and approved by the natural resources management division-NRMO prior to the establishment of structures or uses described herein 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, Buffer Establishment 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~~surface water protection buffer.~~
- ~~c. A description of the type of structures proposed and the construction materials to be used.~~
- ~~d. A description of how stormwater management shall be provided in accordance with Section 62-3666(3)~~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.~~~~

(~~419~~) Dredging and filling shall not be permitted in or connected to ~~class-Class~~ II waters, Outstanding Florida Waters, ~~aquatic-Aquatic preserves-Preserves~~, and conditionally approved ~~class-Class~~ III shellfishing ~~harvesting~~ waters unless:

- a. ~~the-The~~ activity is ~~clearly in the public interest, such as~~ approved maintenance dredging on existing public navigational channels, or
- b. ~~where-Where~~ dredging ~~may is in the public interest by improve-improving~~ the water quality by removing accumulated silt or improving circulation, or
- c. ~~for-For~~ maintenance of existing structures and utility crossings, or
- d. ~~for-For the construction of bulkheads or other~~ shoreline ~~stabilization methods hardening~~ as allowed by this division.

(~~4210~~) Discharges into ~~class-Class~~ II waters, Outstanding Florida Waters, ~~aquatic-Aquatic preserves-Preserves~~, and conditionally approved ~~class-Class~~ III shellfishing ~~harvesting~~ waters shall not degrade existing water quality below existing conditions, or those standards outlined in ~~Chapter 62-302, F.A.C., as amended, ch.17-3~~ for ~~class-Class~~ II water bodies, whichever provides for better water quality.

(~~4311~~) Discharges into ~~class-Class~~ III waters shall not degrade existing water quality below existing conditions, or those standards outlined in ~~Chapter 62-302, F.A.C., as amended, ch.17-3~~ for ~~class-Class~~ III water bodies, whichever provides better water quality.

(~~4412~~) Within the ~~shorelinesurface water~~ protection buffer, the storage of fertilizers, pesticides, hazardous materials or other pollutants which may run off into surface waters shall be prohibited unless the storage system is an above ground vehicular fuel system meeting the requirements of Chapter ~~62-761-762 Florida Administrative Code~~ ~~F.A.C., as amended.~~ (~~Code 1979, § 14-81; Ord. No. 02-18, § 1, 4-30-02, 5-2-03~~)

SECTION 9. Sec. 62-3669. Exemptions. is hereby created to read as follows:

Sec. 62-3669. Exemptions.

Alterations within the surface water protection buffer set forth in (1-3) of this subsection shall be exempt from a County Surface Water permit under this division, provided that the conditions set forth in (4) of this subsection are met:

(1) The construction of up to 250 square feet of impervious surfaces including, but not limited, to decks, paver stones, and walkways. Except for properties on existing residential canals, impervious areas shall not exceed 30 percent of the required buffer area. Impervious surfaces shall not convey drainage into the surface water protection buffer.

(2) The construction of elevated walkways, not to exceed five feet in width.

(3) The removal of Non-Native Invasive Plants in accordance with Chapter 62, Article XIII, Division 2.

(4) Alterations identified in (1-3) of this subsection shall meet the following criteria:

- a. Stormwater management is provided in accordance with Section 62-3666(3); and
- b. The alteration does not necessitate the removal of protected native vegetation in accordance with Chapter 62, Article XIII, Division 2; and
- c. The alteration does not impact wetlands in accordance with Chapter 62 Article X, Division 4; and
- d. The alteration is allowable in accordance with Section 62-3667; and
- e. Applicants shall be subject to and responsible for obtaining all additional necessary Federal, State, local, and building permits, as applicable.

SECTION 10. Sec. 62-3670. Appeals. is hereby created to read as follows:

Sec. 62-3670. Appeals.

Any appeals relating to any administrative decision or determination concerning implementation or application of the provisions of this Division shall be filed in accordance with the provisions set forth in Section 62-507, Brevard County Code, as amended.

SECTION 11. Sec. 62-3671. Penalty; additional remedies; restoration of disturbed areas. is hereby created to read as follows:

Sec. 62-3671. Penalty; additional remedies; restoration of disturbed areas.

Penalties for violations of this division shall be as specified in Section 125.69, F.S., as amended, or Chapter 162, F.S., as amended, or any other appropriate remedy provided by law. The County may seek enforcement action against both the owner of record and any person or entity responsible for carrying out any prohibited action. 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. The Director shall be responsible for reviewing and approving all restoration or mitigation plans. 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.

SECTION 12. CONFLICTING PROVISIONS. In the case of a direct conflict between any provision of this ordinance and a portion or provision of any other appropriate federal, state or County law, rule, code or regulations, the more restrictive shall apply.

SECTION 13. SEVERABILITY. If any section, subsection, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such invalid unconstitutional portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance, provided the remaining portions effectuate purpose and intent of this ordinance.

SECTION 14. AREA ENCOMPASSED. This ordinance shall take effect within the unincorporated area of Brevard County, Florida.

SECTION 15. EFFECTIVE DATE. This ordinance shall become effective upon filing as provided by law. A certified copy of the ordinance shall be filed with the Office of the Secretary of State, State of Florida, within ten days of enactment.

DONE, ORDERED AND ADOPTED in Regular Session, this ____ day of _____, 2011.

ATTEST

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**

Mitch Needelman, Clerk

Robin L. Fisher
Chairman
Brevard County Commission
As approved by Brevard County Commission _____

Reviewed for legal form and content by:

Christine Lepore, Assistant County Attorney