

# REASONABLE ACCESS

## DEFINITIONS

### SW Code Definition

None

### Comp Plan Definition

None

### Zoning Definition

None

### SJRWMD Chapter 40C-400, F.A.C. Definition

None

### FDEP 1996 Mangrove Trimming & Preservation Act

None

### Black's Law Dictionary

Not available to staff. Requested legal opinion from County Attorney.

### Other

Staff investigated the terms “reasonable access to shoreline” and “riparian access” on the web. There were many thousands of references so staff randomly sampled dozens of sites. When the term “reasonable access definition” was searched it yielded over 5 million hits. In a sampling of pages, reasonable access was found in the context of ADA, OSHA rules, FCC communications, medical records, parents’ rights, etc. Staff did not find a definition in the context of this discussion. A “riparian right” search yielded some relevant information:

From Merriam-Webster online dictionary:

*“Riparian right: a right (as access to or use of the shore, bed, and water) of one owning riparian land.”*

From Robert H. Abrams, Encyclopædia Britannica. 2008. Encyclopædia Britannica Online. 09 Sep. 2008 <<http://www.britannica.com/EBchecked/topic/504336/riparian-right>>.

*“In property law, doctrine pertaining to properties adjacent to a waterway that (a) governs the use of surface water and (b) gives all owners of land contiguous to streams, lakes, and ponds equal rights to the water, whether the right is exercised or not. The riparian right is usufructuary, meaning that the landowner does not own the water itself but instead enjoys a right to use the water and its surface (see usufruct).*

*“Some countries and most U.S. jurisdictions regard the water as state property. In the United States the public aspect of water is distinguished by riparian water rights, which—although increasingly regulated—are considered to be private*

*property rights and are protected against governmental seizure by the U.S. Constitution. Two distinct legal doctrines evolved concerning such rights. Historically, the English water law first adopted in the United States was premised on the natural-flow doctrine, pursuant to which a riparian owner has the right to a natural-water flow of undiminished quantity and unimpaired quality. By the mid-19th century, however, virtually all American states had repudiated the natural-flow doctrine in favour of a second doctrine, that of “reasonable use.” Unlike natural-flow doctrine, which limited or opposed any alteration to a watercourse, reasonable-use doctrine favoured developmental use of the country’s watercourses, initially for supplying power by turning waterwheels and later for hydroelectric power and other off-stream consumptive purposes. Under the reasonable-use doctrine, the riparian owner is permitted to make any reasonable use of the water. Although the definition of the term reasonable is context-sensitive, it is based on the notion that the use should not deprive or hinder other riparian users from correlative enjoyment of the resource. A typical case involving the principles of common law riparianism regards the recreational use of a lake. For example, a riparian user who builds a marina in order to lease a substantial number of boat slips on a small lake might be making an unreasonable use if this causes crowding on the lake and degrades recreational use by other riparian property owners.”*

---

## USES

### Use in County Code

#### Sec. 62-3667. Class I waters.

(3) No more than 20 percent of the lot width or 25 linear feet, whichever is greater, of any shoreline protection buffer of a project or parcel, or the offshore emergent vegetation associated with a project or parcel, may be altered for reasonable access. This shall not preclude mitigation projects or the planting of native vegetation.

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

(6) For projects or parcels without mangroves, no more than 20 percent of the lot width or 25 linear feet, whichever is greater, of any shoreline protection buffer of a project or parcel, or the offshore emergent vegetation associated with a project or parcel, may be altered for reasonable access. The remainder of the shoreline protection buffer shall be maintained in unaltered vegetation, except for noxious species, as permanent open space. This, however, shall not preclude mitigation projects, the planting of native vegetation, or the development described in applicable sections of this division within the shoreline protection buffer areas.

(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.

**Use in Comp Plan**

None

**Use by State**

SJRWMD Chapter 40C-400

None.

FDEP 1996 Mangrove Trimming & Preservation Act

None