

F. Consent Agenda - Natural Resources Management
ITEM 3.



AGENDA REPORT
July 9, 2019

BCC-78 Renewal: Public Interest Determination Delegation for Maintenance Dredging

SUBJECT:

Renewal of Board Policy BCC-78 - Public Interest Determination Delegation for Maintenance Dredging (Countywide)

FISCAL IMPACT:

FY 18-19 - None

FY 19-20 - None

DEPT/OFFICE:

Natural Resources Management

REQUESTED ACTION:

Request that the Board renew delegated authority to NRM Director for existing navigational channels, existing access to water dependent shore based facilities, and add where dredging is in the public interest due to improving the water quality by removing accumulated silt or improving circulation.

SUMMARY EXPLANATION and BACKGROUND:

Natural Resources Management Department (NRM) reviews an average of three maintenance dredging requests from private citizens per year. These requests are primarily related to marina basins, manmade canals, and other navigational channels that are experiencing navigational restrictions as a result of the accumulation of silts and sediments. Prior to the implementation of BCC-78 in April 2009, policy was that the Board reviewed all Public Interest Determination (PID) requests for dredging projects, including maintenance dredge activities.

Chapter 62, Article X, Division 3, entitled Surface Water Protection, allows for dredging if found to be consistent with Section 62-3668:

(9) Dredging and filling shall not be permitted in or connected to Class II waters, Outstanding Florida Waters, Aquatic Preserves, and conditionally approved Class III shellfish harvesting waters unless:

a. The activity is approved maintenance dredging on existing public navigational

channels, or

b. Where dredging is in the public interest by improving the water quality by removing accumulated silt or improving circulation, or

c. For maintenance of existing structures and utility crossings, or

d. For the construction of bulkheads or other shoreline stabilization methods as allowed by this division.

Sec. 62-3661 defines public interest:

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.

Staff requests that the Board renew attached Policy BCC-78, that delegates PID authority to the NRM Director for approval of maintenance dredging for existing navigational channels, existing access to water dependent shore based facilities, and add where dredging is in the public interest by improving the water quality by removing accumulated silt or improving circulation. This will continue the streamlined approval process for those dredging projects that meet the criteria in Section 62-3668(9). The delegation of authority is not in conflict with the Comprehensive Plan policies related to maintenance dredging (Conservation Element Policies 3.2.D, 3.3.G, 3.4, 3.5 and 3.7 and Surface Water Management Element Policy 1.17). The relevant policies are included as Attachment A. Dredging projects conducted by the County are presumed to be in the public interest if the Board has approved funds for the project.

Per Board Policy BCC-31, Board Policies and Administrative Orders are subject to review every three years to determine their relevance, appropriate department assignment, duplication, and to maintain statutory law updates. Consequently, proposed Board Policy "Public Interest Determination Delegation for Maintenance Dredging" shall be reviewed in July 2022.

ATTACHMENTS:

Description

- ▣ **BCC-78 Public Interest Determination Delegation for Maintenance Dredging (Current)**
- ▣ **BCC-78 Public Interest Determination Delegation for Maintenance Dredging (Proposed)**
- ▣ **Conservation Element Objective 3**
- ▣ **Surface Water Management Element Policy 1.17**



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July 10, 2019

MEMORANDUM

TO: Frank Abbate, County Manager

RE: Item F.3., Board Policy BCC-78 Renewal: Public Interest Determination for Maintenance Dredging Countywide

The Board of Commissioners, in regular session on July 9, 2019, approved Board Policy BCC-78 to renew delegated authority to Natural Resources Management Director for existing navigational channels, existing access to water dependent shore based facilities, and add where dredging is in the public interest due to improving the water quality by removing accumulated silt or improving circulation. Enclosed is a fully-executed BCC-78 Policy.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/kp

Encl. (1)

cc: Natural Resources Management



POLICY

BOARD OF COUNTY COMMISSIONERS

Title:	Public Interest Determination Delegation for Maintenance Dredging	NUMBER:	BCC-78
		APPROVED:	07/09/19
		ORIGINATOR:	Natural Resources
		REVIEW:	07/09/22

I. OBJECTIVE

To delegate authority to the NRM Director for the approval of maintenance dredging for existing navigational channels, existing access to water dependent shore based facilities, and where the dredging is in the public interest by improving the water quality by removing accumulated silt or improving circulation.

II. DEFINITIONS AND REFERENCES

- A. "Maintenance Dredging" means mechanical or other methods used to remove sovereign submerged land or private submerged land in existing channels, manmade canals, or basins where navigation by vessels presently occurs and has been previously and legally dredged.
- B. "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.

III. DIRECTIVES

NRM shall approve maintenance dredging proposals for existing navigational channels, existing access to water dependent shore based facilities, and where

the dredging is in the public interest by improving the water quality by removing accumulated silt or improving circulation where the following criteria are met:

- All State and Federal exemptions, permits, and/or approvals are obtained.
- The dredging activities are done with effective turbidity controls. Where turbidity screens or similar devices are used, they should be secured and regularly monitored to avoid manatee entrapment.
- The dredging meets the criteria in Chapter 62, Article X, Division 3, entitled Surface Water Protection, Section 62-3668(9).
- The dredging request does not relate to the use, sale, lease, or transfer of interest in sovereignty lands or severance of materials from sovereignty lands.

All other dredging projects which do not meet the aforementioned criteria will be forwarded to the Board for consideration.

IV. RESERVATION OF AUTHORITY

The authority to issue and/or revise this policy is reserved to the Board of County Commissioners.



Scott Ellis, Clerk



Kristine Isnardi, Chair

As approved by the Board on July 9,
2019

- B. Regulating subdivisions to address bicycle and pedestrian pathways; and
- C. Regulating land clearing and landscaping regulations to augment passive cooling by trees.

Policy 2.2

Brevard County shall continue to implement the Florida Energy Efficient Code for new construction and substantially rehabilitated structures.

Policy 2.3

Brevard County should continue to implement waste reduction, reuse, recycling and conversion of waste to energy as part of its waste management strategies.

Policy 2.4

Brevard County shall consider energy conservation in the development and implementation of County ordinances.

Policy 2.5

Brevard County should pursue transportation options that would decrease per capita energy consumption.

Policy 2.6

Brevard County should coordinate with the East Central Florida Regional Planning Council, the Economic Development Commission of Florida's Space Coast, and the State to encourage development and use of energy efficient and renewable technologies to enhance economic development while conserving energy.

Surface Water

Objective 3

Improve the quality of surface waters within Brevard County and protect and enhance the natural functions of these waters.

Policy 3.1

Brevard County shall cooperate with the Florida Department of Environmental Protection (FDEP) to require small package treatment plants adjacent to surface waters to comply with existing federal, state, or regional rules and regulations, and to ensure that the necessary renovations to achieve compliance are completed in a timely manner.

Policy 3.2

Brevard County shall continue to prevent negative impacts of development in and adjacent to Class I waters by implementing and revising, as necessary, the Surface Water Protection Ordinance including the following minimum criteria:

Criteria:

- A. Maintain a two hundred (200) foot surface water protection buffer from the ordinary high water line or mean high water 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 buffer establishment line that approximates the land-water interface may be approved administratively as defined in ordinance. The use of the alternative buffer establishment line shall only be applied to shorelines with a clearly defined land-water interface.
- B. Acceptable uses within the surface water protection buffer are passive recreation, hunting, fish and wildlife management, open space and nature trails, and similar uses.
- C. Require discharges of any substances into Class I waters to meet or exceed applicable receiving water quality standards.
- D. Prohibit dredging and filling, except for permitted utility crossings, publicly owned recreational projects which do not degrade water quality, and necessary maintenance of existing projects.
- E. Regulate development and mining operations within the hydrologic basin of Class I waters. Prohibit mining operations within the 10-year floodplain of Class I waters.
- F. Prohibit alteration within the surface water protection buffer unless it is in the public interest and does not adversely impact water quality and natural habitat.

Policy 3.3

Brevard County shall continue to make efforts to prevent negative impacts of development in and adjacent to the Indian River Lagoon and its tributaries designated as Class II waters, Aquatic Preserves and Outstanding Florida Waters by implementing and revising as necessary, the Surface Water Protection Ordinance, including the following minimum criteria:

Criteria:

- A. Maintain a fifty (50) foot surface water protection buffer 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 buffer establishment line that approximates the land-water interface may be approved administratively as defined in ordinance. The use of the alternative buffer establishment line shall only be applied to shorelines with a clearly defined land-water interface.

- B. Except as allowable under Policies 3.3.C and 3.3.D, primary structures shall not be permitted within the surface water protection buffer. The County shall establish allowable uses within the surface water protection buffer. Stormwater management for all alterations associated with allowable uses shall be required to protect water quality of the receiving water body. Provisions for the alteration and/or removal of non-native invasive plants, mitigation projects, and the planting of native species shall be established by the County.
- C. For residential lots platted or established by deed on the official record books of Brevard County prior to September 8, 1988, an alternative to the fifty (50) foot surface water protection buffer described above shall be available for those lots which have insufficient lot depth to construct a primary structure. In the case where there is insufficient lot depth to construct a primary structure, this alternative shall allow the surface water protection buffer to be reduced to twenty five (25) feet if additional measures are taken to preserve water quality and natural habitat within the adjacent surface water body. These additional measures shall, at a minimum, prevent the first inch of stormwater runoff from entering surface waters; and may include, but not be limited to, a stormwater retention system or native shoreline revegetation. Where applicable, stormwater management measures shall be consistent with DEP 62-25, as amended and FS 373, as amended.
- D. For residential lots located along areas of the Indian River Lagoon and its tributaries added to the State's designation of Class II Waters as of February 17, 2016, and platted or established by deed on the official record books of Brevard County prior to that date, an alternative to the fifty (50) foot surface water protection buffer described above shall be available for those lots which have insufficient lot depth to construct a primary structure. In the case where there is insufficient lot depth to construct a primary structure, this alternative shall allow the surface water protection buffer to be reduced to twenty five (25) feet if additional measures are taken to preserve water quality and natural habitat within the adjacent surface water body. These additional measures shall, at a minimum, prevent the first inch of stormwater runoff from entering surface waters; and may include, but not be limited to, a stormwater retention system or

native shoreline revegetation. Avoidance and minimization of buffer impacts shall be required. Where applicable, stormwater management measures shall be consistent with DEP 62-25, as amended and FS 373, as amended. Lots located along areas of Aquatic Preserves and Outstanding Florida Waters shall maintain a fifty (50) foot surface water protection buffer in accordance with Policy 3.3.A, B, and C.

- E. Within the surface water protection buffer the maximum amount of impervious surface is thirty (30) percent.
- F. Prohibit shoreline alteration other than that allowed by ordinance, unless the alteration is in the public interest and does not adversely impact water quality, natural habitat, and adjacent shoreline uses.
- G. Prohibit channelization, dredging and filling, and impoundment of natural waters of the State unless the activity is clearly in the public interest and does not adversely impact water quality, natural habitat, and adjacent shoreline uses. Dredging shall not be permitted in or connected to Class II Waters, Outstanding Florida Waters (OFWs), Aquatic Preserves, areas that contain ten percent (10%) seagrass or more, and conditionally approved shellfish harvesting waters unless the activity is a federal navigation project, in the public interest, such as approved maintenance dredging of existing public or private navigational channels, or where dredging may improve water quality by removing accumulated silt or improving circulation, or for maintenance of existing structures and utility structures and utility crossings, or for shoreline hardening as allowed by this element.
- H. Prohibit discharges of any substances below ambient water quality standards.

Policy 3.4

Brevard County shall continue to prevent negative impacts of development in and adjacent to Class III waters (except Outstanding Florida Waters and Aquatic Preserves) along the St. Johns River and Indian River Lagoon and its tributaries by implementing and revising as necessary, the Surface Water Protection Ordinance including the following minimum criteria:

Criteria:

- A. A twenty five (25) foot surface water protection buffer from the ordinary high water line, mean high water line, or the safe upland line as determined or approved by the FDEP Bureau of Survey and Mapping shall be established. In lieu of an approved ordinary high water line, mean high water line, or safe upland line, an alternative buffer establishment

line that approximates the land-water interface may be approved by the director. The use of the alternative buffer establishment line shall only be applied to shorelines with a clearly defined land-water interface.

- B. Except as allowable under Policies 3.4.C and 3.4.D, primary structures shall not be permitted within the surface water protection buffer. The County shall establish allowable uses within the surface water protection buffer. Stormwater management for all alterations associated with allowable uses shall be required to protect water quality of the receiving water body. Provisions for the alteration and/or removal of non-native invasive plants, mitigation projects, and the planting of native species shall be established by the County .
- C. For residential lots platted or established by deed on the official record books of Brevard County prior to September 8, 1988, an alternative to the twenty five (25) foot surface water protection buffer described above along Class III waters shall be available for those lots which have insufficient lot depth to construct a primary structure. In the case where there is insufficient lot depth to construct a primary structure, this alternative shall allow the surface water protection buffer to be reduced to fifteen (15) feet if additional measures are taken to preserve water quality and natural habitat within the adjacent surface water body. These additional measures shall, at a minimum, prevent the first inch of stormwater runoff from entering surface waters; and may include, but not be limited to, a stormwater retention system or native shoreline revegetation. Where applicable, stormwater management measures shall be consistent with DEP 62-25, as amended and FS 373, as amended.
- D. Prohibit shoreline alteration other than that allowed by ordinance, unless it is in the public interest or prevents or repairs erosion; and does not adversely impact water quality, natural habitat and adjacent shoreline uses.
- E. Except for properties on existing residential manmade canals, the maximum amount of impervious surface within the surface water protection buffer is thirty (30) percent.
- F. Prohibit discharges of any substances below ambient water quality standards.

Policy 3.5

All dredging activities must be done with effective turbidity controls. Where turbidity screens or similar devices are used, they should be secured and regularly

monitored to avoid manatee entrapment.

Policy 3.6

Vertical seawalls and bulkheads shall be prohibited along the Indian River Lagoon system, excluding man-made canals. Stabilization of the estuarine shoreline may be allowed to protect structures and real property from erosion. Rip-rap material, pervious interlocking brick systems, filter mats and other similar stabilization methods combined with vegetation shall be used in lieu of vertical seawalls and bulkheads when stabilization of the shoreline is approved. Living shorelines shall be encouraged as a preferred shoreline stabilization method.

Policy 3.7

New man-made canals connected to the Indian River Lagoon system are prohibited. The expansion (widening and/or deepening) of existing ditches, drainage right-of-ways, drainage easements and stormwater facilities connected to the Indian River Lagoon to accommodate navigation shall be prohibited unless the activity is in the best public interest and does not adversely impact the Indian River Lagoon. Maintenance dredging on existing navigational channels, private or public canals, or within existing marinas may be allowed upon review by the County.

Policy 3.8

When deemed necessary to meet State-mandated water quality standards, Brevard County may establish setbacks from the shoreline of the Indian River Lagoon for septic tanks and drainfields. Such setbacks shall at a minimum, be in accordance with F.S. 381.0065(4), as may be amended. In those cases where there is insufficient lot depth to meet County-established setbacks more stringent than those established by State statute, septic tanks and drainfields shall be located in accordance with F.S. 381.0065(4), as may be amended.

Policy 3.9

Brevard County will continue to support spoil island assessment projects to determine which islands are valuable bird rookery areas. These islands should be designated as such, and protected during nesting season. Other islands should be designated as recreational areas. Any study will be coordinated with any spoil island management plans designed and implemented by other agencies, such as the Florida Inland Navigational District.

Policy 3.10

Brevard County shall continue to work with the St. Johns River Water Management District (SJRWMD), FDEP, and Indian River Lagoon Program (IRLP) and other appropriate agencies in developing appropriate water quality standards for estuarine waters within the Indian River Lagoon.

Policy 3.11

Brevard County shall continue to support programs for plugging free-flowing artesian wells, with highest priority being given to those adjacent to the Lagoon.

Policy 3.12

Brevard County should cooperate with the SJRWMD in the District's aquatic weed program for the St. Johns River.

Policy 3.13

Brevard County strongly supports the designation of the Indian River Lagoon from SR 405 north to the County line as an Aquatic Preserve.

Policy 3.14

The creation of new spoil islands should be discouraged. Existing spoil islands should be retained in public ownership and utilized as bird rookeries and recreational areas. In addition, restoration efforts such as wetland vegetation planting, upland vegetation planting, and refuse removal that could foster biological production, control erosion and enhance the habitat, aesthetic and recreational values of the island should be undertaken.

Policy 3.15

By 2013, the County shall establish appropriate protective measures along conveyance systems and tributaries of the St. Johns River and Indian River Lagoon to meet State and Federal water quality standards.

Floodplain Areas

Objective 4

Reduce loss of flood storage capacity and reduce risk to life and property by continuing to apply regulations which minimize the impact of development within flood hazard areas.

Policy 4.1

Brevard County shall continue to protect the riverine floodplain in order to protect infrastructure and human life, conserve flood storage capacities, and to improve, where feasible, the quality of water within the watershed. The preferred land use, density and fill footprint of the riverine floodplain is in the predevelopment natural state and Brevard County supports the use of fee simple acquisition, less than fee acquisition, transfer of development rights, appropriate development standards, and other innovative measures to preserve and restore the predevelopment riverine floodplain. At a minimum, the following criteria shall be the basis for the protection of the riverine floodplain:

Policy 1.16

No new structures (such as dams, weirs, locks, levees or other artificial mechanisms) designed to control the stage and/or flow of waters of the State shall be constructed, except where no practical alternative exists and where such structures are necessary to protect the public safety, safeguard existing flood control structures, habitable structures and other public investments, or restore the function of the natural water dependent ecosystem. The use of temporary structural modifications to control the stage or flow of a water body as a part of any government sanctioned program of flood control, water quality restoration, habitat restoration or exotic plant control should be designed and operated so as to minimize harm to non-target organisms or natural ecosystems.

Policy 1.17

The channelization, dredging or impoundment of natural waters of the State shall be prohibited, except where no practical alternative exists for those operations necessary to correct existing threats to public health or safety, allow maintenance of existing navigational waterways, or provide reasonable access to water dependent shore-based facilities. All practical steps shall be taken to minimize adverse impacts to biological attributes of the water resources and water-dependent natural systems.

Meeting Future Needs**Objective 2**

Require stormwater management facilities to meet future development requirements, consistent with the County's Master Stormwater Management Plan and this Comprehensive Plan.

Policy 2.1

Brevard County's Master Stormwater Management Plan shall coordinate the timing and location of stormwater management facilities to projected future needs and the future land use plan. Intensity and levels of stormwater services shall be tied to the development of an area, and consistent with level of service standards.

Policy 2.2

The Master Stormwater Management Plan shall also contain alternative methods of funding for the provision of projected future stormwater management needs. These may include, but are not limited to impact fees, capacity reservation fees, or hookup fees to pay for new public facilities or improvements to existing public facilities required for new development.



POLICY

Title:	Public Interest Determination Delegation for Maintenance Dredging	NUMBER:	BCC-78
		APPROVED:	<u>04/14/0907/09/19</u>
		ORIGINATOR:	Natural Resources
		REVIEW:	<u>04/14/1207/09/22</u>

I. OBJECTIVE

To delegate authority to the NRMØ Director for the approval of maintenance dredging for existing navigational channels, ~~and existing access to water dependent shore based facilities,~~ and where the dredging is in the public interest by improving the water quality by removing accumulated silt or improving circulation.

II. DEFINITIONS AND REFERENCES

- A. "Maintenance Dredging" means mechanical or other methods used to remove sovereign submerged land or private submerged land in existing channels, manmade canals, or basins where navigation by vessels presently occurs and has been previously and legally dredged.
- B. "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.

III. DIRECTIVES

~~The Director of~~ NRMØ shall approve maintenance dredging proposals for existing navigational channels, ~~and existing access to water dependent shore based facilities,~~ and where the dredging is in the public interest by improving the water quality by removing accumulated silt or improving circulation and existing access to water dependent shore based facilities where the following criteria are met:

- All State and Federal exemptions, permits, and/or approvals are obtained.

ATTACHMENT B

- The dredging activities are done with effective turbidity controls. Where turbidity screens or similar devices are used, they should be secured and regularly monitored to avoid manatee entrapment.
- The dredging meets the criteria in Chapter 62, Article X, Division 3, entitled Surface Water Protection, Section 62-3668(~~119~~).
- The dredging request does not relate to the use, sale, lease, or transfer of interest in sovereignty lands or severance of materials from sovereignty lands.

All other dredging projects which do not meet the aforementioned criteria will be forwarded to the Board for consideration.

IV. RESERVATION OF AUTHORITY

The authority to issue and/or revise this policy is reserved to the Board of County Commissioners.

Scott Ellis, Clerk

~~Chuck Nelson~~ Kristine Isnardi,
Chairman
~~Board of County Commissioners~~
~~Brevard County, Florida~~

As approved by the Board of County
Commissioners on ~~April 14, 2009~~ July 9,
2019