

Protocol for Erosion Control Lines

Prior to beach erosion control projects, an Erosion Control Line (ECL) must be established along the shoreline to define the property boundary between sovereign submerged land and upland ownership. In discharging its statutory duties to establish these boundary lines, coordination activities must occur with the Florida Department of Environmental Protection's Division of Water Resource Management (DWRM), Division of State Lands (DSL) - Office of Survey & Mapping (OSM), Office of General Counsel (OGC), local sponsors, consultants and surveyors. There are several steps one must follow to establish an erosion control line, which is the purpose of this document.

The Statutory and Rule Authority for Erosion Control Lines are the following:

- 161.141 F.S., Beach Restoration Projects
- 161.161 F.S., Procedure for Approval of Beach Restoration Projects
- 161.181 F.S., Recording procedures for ECL's
- 161.191 F.S., Vesting of Title to Lands
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- 161.201 F.S., Preservation of Common-Law Rights
- 161.211 F.S., Cancellation of Resolution for Nonperformance
- 177 F.S., Land Boundaries
- 5J-17 F.A.C., Technical Standards and Mapping Requirements
- 62B-41.008, Permit Application Requirements and Procedures

Acronyms:

- FDEP – Florida Department of Environmental Protection
- BIPS – Beaches, Inlets and Ports
- BMFA – Beaches and Mines Funding Assistance Program
- BMES – Beaches, Mines and Environmental Support Program
- CCCL – Coastal Construction Control Line
- DSL – Division of State Lands
- DWRM – Division of Water Resource Management
- ECL – Erosion Control Line
- JCP – Joint Coastal Permit
- LABINS – Land Boundary Information System
- MHWL – Mean High Water Line
- OCULUS – Electronic Document Management System
- OGC – Office of General Counsel
- OSM – Office of Survey and Mapping
- PSM – Professional Surveyor and Mapper
- USACE – United States Army Corps of Engineers

You need an erosion control line (ECL), when the following applies:

- The project is authorized and defined by Congress/US Army Corps (USACE) or State as a beach restoration project
- The project advances the mean high water line (immediately or over time).
- The project has a signed and dated local resolution; and
- To establish an ECL, the project must be located along FDEP designated “critically eroded beach”.

You don't need an erosion control line (ECL) when the following applies:

- The dune project is seeking a coastal construction control line (CCCL) permit.
- The construction plans for the dune project have demonstrated that the mean high water line (MHWL) will not be advanced nor has an adverse impact on offshore resources through the equilibration process.
- The beach project is the result of an inlet or navigation channel maintenance dredging disposal and has not been defined as an authorized beach project by Congress/ USACE or State. Chapter 161.141 F.S. This applies even if the project is being permitted through a joint coastal permit (JCP); or
- The project is constructed along a “non-critically eroded beach”. In this case, only a MHWL survey is required.

Timeline:

In order for the ECL to represent the current condition of the project:

- The MHWL survey should be approximately no more than 6 months old at the time of the ECL hearing. If the survey is several months beyond six months old at the time of the hearing, the Division of State Lands/ Office of Survey and Mapping or the Division of Water Resource Management may not accept the survey and request that the MHWL survey be surveyed again so it will be reflective of current coastal conditions before the restoration project.
- The project should be planned for construction within 2 years of the recorded ECL. If the project is not constructed within two years of the ECL recording, the ECL may need to be vacated and re-established based on a more current MHWL survey. ECL's need to be consistent with 161.211 F.S.

Erosion Control Line (ECL) Establishment Checklist:

Signed and Dated Local Resolution: Local Sponsor

Upon establishment of the project limits, beginning with the definition of the project area, securing local support for both the project and the establishment of the property boundary between sovereign submerged lands and the upland property owners, it is recommended the local sponsor prepare and have enacted a local government resolution in support of the proposed ECL. The local sponsor should then submit the adopted resolution to BMFA.

- ECL File origin date: BMFA**

The Department's BMFA Project Manager will create an ECL Establishment File, after receiving the adopted ECL resolution from the local sponsor. A copy of the resolution will be placed into OCULUS and a link will be sent to OSM and BMES staff.
- Contract with Surveyor Executed: Local Sponsor**

Local Sponsor shall execute a contract with a surveyor to perform a MHWL survey along the project area. (As a timing guideline, the difference between the scheduled ECL public hearing and the MHWL survey must not exceed 6 months).
- Receipt of LABINS/MHWL Procedural Approval Form: Contract Surveyor**

Contract Surveyor shall complete, submit and receive approval from the OSM of a "Mean High Water Procedural Approval Form". The form is submitted online to OSM at:
(http://data.labins.org/2003/SurveyData/WaterBoundary/MHW_Procedures/mhw_proc6.cfm)

(http://www.labins.org/survey_data/water/water.cfm)
- Provide list of riparian owners in project area: Contract Surveyor**

Contract Surveyor shall consult with the county's property appraiser office to develop a comprehensive list of all riparian owners of record of upland property located within 1,000 feet (radial distance) of the proposed ECL and determine the recording requirements for the recordation of the final State Trustees ECL Resolution in the County's Official Record. Property owners shall be identified by his or her name and address appearing upon the latest tax assessment roll. The list of property owners shall be provided to the Local Sponsor and the BMFA Project Manager, who will upload document into OCULUS.
- Request submerged title determination: Contract Surveyor**

Contract Surveyor shall request from Office of Survey and Mapping (Title and Land Records Section), a copy of the title determination which identifies state owned uplands adjacent to the project and private submerged lands previously conveyed by the State of Florida, for example via deed or Legislative grant, as well as areas within the project boundaries subject to leases and easements.
- DEP Control Monuments & Project Extent Requested: Contract Surveyor & BMES**

Surveyor consults with BMES Survey Staff for most recent information on the location and availability of DEP 2nd order (or better) control monuments, & project boundary. BMES survey staff updates the ECL Index.

- Perform MHW survey: Contract Surveyor**
Shall perform the MHWL/ECL Survey and provide the draft survey to the OSM, BMES, BMFA, and the Local Sponsor simultaneously. Contract Surveyor shall incorporate items listed in “Review of Draft Survey” action below.

- Review of Draft Survey and provide approval/RAI to BMFA and Local Sponsor: OSM and BMES Staff**
Shall perform MHWL review per mapping requirements identified below and provide coordinate geometry for the line location to the Division/Department’s GIS Standards.

The Survey has been checked for correctness and compliance with 161.141 F.S., 177, Part II F.S., and 5J-17 F.A.C. mapping requirements. Specifically, the following items have been reviewed:

OSM review:

- The survey was dated within 90 days of submittal to the BSM.
- A minimum of one tidal benchmark was shown for each site.
- The horizontal location of the MHW line was shown and bearings and distances shown along the MHW line.
- The approved procedure used to establish the MHW line was noted on the survey drawing.
- The drawing included a notation near the tidal boundary that reads: Mean High Water Elevation x.xx feet, NAVD88 as located on (date).”
- A location map, the Section, Township and Range were noted on the survey drawing.
- The survey drawing included the following note: “This mean high water survey complies with Chapter 177, Part II, Florida Statutes.”
- A copy of the Mean High Water Survey Procedural Approval was submitted with the survey drawing.

BMES review:

- Location of the existing MHWL is clearly shown.
- Location of the proposed ECL is clearly shown and is within a FDEP designated critically eroded beach segment.
- Location of the proposed ECL is clearly shown and is consistent with the length of the project boundary.
- Survey is tied to DEP 2nd order control monuments or better.
- Control and range (R) monument locations are from the range tabulation and are clearly shown upon the drawing.
- Predicted limits of construction landward and waterward of the proposed ECL are clearly shown.

- The predicted equilibrated post-construction MHWL location as the Equilibrium Toe of Fill (ETOF) are shown.
- Line work overlays an aerial photo base map image, not exceeding five years preceding the date of the MHWL/ECL survey.
- Section, Township and Range lines are shown and scale accurate.
- Property lines are shown and scale accurate.
- Location of all public access points, walkovers, parking, public lodging establishments, public lands, and easements are noted.
- Parcels are identified with landowners' names and parcel numbers from county records.

If submitted survey is sufficient, BMES will submit approval memo to OSM and BMFA Project Manager. If information in the survey is insufficient, BMES and / or OSM staff will coordinate with contract surveyor until a sufficient survey has been received and approved.

DWRM (BMES) and State Lands (OSM) Review / Issuance of Survey Completeness Review Memorandum Letter: OSM and BMES

State Lands will review the draft MHWL / Proposed ECL survey. Once the MHWL survey is accepted forwarded by ECL Coordinator. State Lands (OSM) will verify the survey is compliant with 177, F.S., and will confirm title determination conducted and any state land issues resolved. If not compliant, State Lands or DWRM may issue an RAI or communicate to contractor by phone to resolve minor errors. When all parties have accepted the draft MHWL survey, a completeness letter will be drafted by State Lands (OSM) and BMES. Completeness memorandum shall be uploaded into OCULUS and notification sent to Local Sponsor, contract surveyor, OGC, BIP, BMES ECL coordinator and BMFA Project Manager.

Accept final MHWL surveys: State Lands (OSM)

Upon final acceptance, the OSM shall prepare the MHWL Notice of Filing (with assigned MHWL file number to the survey drawings) and a PDF of signed Draft MHWL/ Proposed ECL Survey. Documents will be uploaded to OCULUS and notification sent to Local Sponsor, contract surveyor, OGC, BIP, BMES ECL coordinator and BMFA Project Manager.

Final MHWL surveys: Contract Surveyor

Contract Surveyor shall provide two signed and sealed copies of the Draft MHWL/ Proposed ECL Survey document plat drawings (including the notice of filing number) signed and sealed by a Professional Surveyor and Mapper licensed within the State of Florida; Legal description in ASCII text format on digital media; Digital copies of the drawings on portable document format (pdf).provided to the Office of Survey and Mapping as requested and to the Local Sponsor.

- Review and Assign Hearing Officer: OGC**
A representative from FDEP's OGC will delegate authority to a Department staff member to attend the Public Workshop and act as Hearing Officer.

- Hearing Officer Briefing: BMFA Project Manager**
Prior to scheduling public workshop and hearing, the BMFA project manager shall conduct a briefing with hearing officer and local sponsor.

- ECL Workshop/Hearing: Hearing Officer, OGC & BMFA Project Manager**
 1. Notice must be published in the Florida Administrative Register (FAR) no less than seven days prior to the public hearing. FAR not explicitly required for public workshop, but should be provided along with hearing as a matter of policy.
 2. Notice must be published on the Department's website and website calendar seven days before the event.

- ECL Workshop/Hearing: Local Sponsor**
Upon receipt of the Notice of Filing of MHWL from OSM, the local sponsor will chose a location(s) and will schedule a date and time for a public workshop, immediately followed by a Public Hearing. The local Sponsor shall develop the itinerary for both the Workshops and Public Hearing. Additionally, the local sponsor should discuss the notice of the ECL workshop/ hearing in a board of county commission or city commission meeting before the actual workshop or hearing is held.

The process of noticing and conducting the public workshop and hearing for ECL establishment must meet the requirements of Chapter 120, F.S. and 161.161(4). Scheduling the workshop and hearing is also dependent on the likelihood of issuance of a Joint Coastal Permit from BBCS. Coordination between the local sponsor, Hearing Officer and the BMFA is necessary to determine the appropriate schedule for the meetings and to coordinate the hearing officer's availability. Draft notices must be reviewed and approved by OGC prior to posting to make sure that they meet all Departmental requirements.

General guidelines for notices for the workshop and hearing are as follows:

1. Notice must be published in a local newspaper once a week for three consecutive weeks prior to the public workshop and hearing. The last day of publication may be the day of the workshop. The NOTICE must identify the proposed project name, section, township, range, and county in which the project is proposed, and include the location, address, date and time of the Public Workshop and Hearing.

2. Notices of public workshop or hearing must be sent certified mail to all riparian owners of record of upland property located within 1,000 feet (radial distance) of the proposed ECL. Property owners shall be identified as his or her name and address appear upon the latest tax assessment roll. The NOTICE should also be used to inform other interested parties of the proposed line. Proof of certified mailings must be submitted to the Department. Notices to Riparian owners shall include the items listed above, the legal description of the proposed Erosion Control Line; and a map depicting the location of the proposed line.

“D size” maps of the entire MHWL must be provided for review during the hearing. Maps can be provided as posters or in plats on a table for display. If maps are provided, multiple copies are recommended for easy accessibility.

Transmit digital copies of all certified letter receipts, notices, and agendas to the BMFA Project Manager: Local Sponsor

- Proof of publication of the public workshop and hearing notices in the Florida Administrative Register.
- Proof of publication of the public workshop and hearing notices in the local newspaper.
- Certified mail receipts as proof of notification of the riparian property owners of the public workshop and hearing.
- A copy of the public workshop and hearing notices that were mailed to the riparian property owners.
- Submits draft Workshop and Hearing agendas and presentations to BMFA for Departmental review.

Update ECL Establishment File: BMFA Project Manager

Updates ECL Establishment file with ECL workshop or hearing notice information, uploads information to OCULUS, and provides link to DEP OGC and Hearing Officer, if they are different.

Attend Workshop and Hearing: Local Sponsor, Contract Surveyor or Coastal Engineering consultant, BMFA project manager and Hearing Officer

Maps must be posted of entire project area in accordance with filing requirements. During the workshop, a slide show presentation about the project will be presented by the Local Sponsor or its agent. DEP staff, the local sponsor and their agents can engage in dialogue about the project during the workshop. Immediately following the conclusion of the Workshop, the hearing should commence. Upon the start of the hearing, a formal speech will be presented by the Hearing Officer followed by an abbreviated presentation. Attendees can make formal comment but no dialogue will be allowed.

- Post ECL Hearing responsibilities: Hearing Officer**
Following the hearing, written public comments on the proposed ECL are received for a recommended period of 30 days from the date of the hearing. At the end of the 30-day comment period, a Hearing Officer's Report will be prepared with a recommendation to approve or disapprove the ECL. The report along with the audio file and transcript from the hearing will be transmitted to the BMFA.

- Post ECL hearing documents: BMFA Project Manager**
Upon receipt of the Hearing Officer's Report, the audio file and the transcript from the hearing, the BMFA Project Manager will place the documents into the ECL Establishment File, upload to OCULUS. Notification will be sent to OSM.

- ECL establishment determination: State Lands (OSM)**
The Office of Survey and Mapping will review the ECL file and Hearing Officer's Report and as delegated by the Board of Trustees, and determine whether establishment of the ECL can be approved;

If the line is not approved, a letter will be prepared and transmitted to the local sponsor, advising of the reasons for the disapproval. A copy of the disapproval letter will be sent to the local sponsor, BMFA and BMES ECL Coordinator.

Upon approval of the ECL, Office of Survey and Mapping shall request from the contracted surveyor two Mylar copies of the final **Erosion Control Line Survey**, signed and sealed by a Professional Surveyor and Mapper, licensed within the State of Florida, and when received will replace the Draft MHWL/ Proposed ECL with the final Erosion Control Line Survey in the designated DEP Survey and Mapping Repository for approved MHWL Surveys.

- Prepare ECL Resolution and Record ECL: State Lands (OSM)**
If Approved, State Lands on behalf of the Board of Trustees through the OSM shall prepare a resolution establishing the ECL. The ECL resolution will be executed by the designated PSM staff member of the OSM. The OSM will record the Trustees ECL resolution in the official public records of the county(s) in which the line is located and transmit the signed ECL resolution, with the County recording stamp affixed, the recording location book and page in the Counties public records, and a .pdf digital copy of the final map to the BMFA.

The ECL resolution must include three signatures on the final document's cover sheet of the contract surveyor's plat (Contractor PSM signature and seal, PSM designee signature from the OSM and signature from the Clerk of Court). Also, the book of plats identifying book/ pages must be included on the cover sheet of the surveyor's plat above the signature of the Clerk of Court pursuant 161.181 Florida Statutes.

State Lands will file proof of recording in State lands files, and ECL will be recorded in LABINS at State Lands, with a .pdf of the recorded resolution and revised GIS layer.

- Upload final ECL documents: BMFA Project Manager**
BMFA Project Manager will upload final ECL documents into OCULUS and notify or provide copies to BMES staff, BIP Staff, and local sponsor.
- Update Index / Layers: BMES**
Update BMES ECL index, and update ECL GIS layer, and in BMES databases. BMES Staff will update ECL file and spreadsheet in GIS database, review lines and legal description for accuracy, and will update GIS layer and metadata containing the pertinent ECL information.

The ECL process has been completed and the project can be built when the following items have been recorded:

- Recorded ECL resolution, drawing & description in the County Clerk of Court, signed and sealed.
- The ECL resolution must include three signatures on the final document's cover sheet of the contract surveyor's plat (Contract PSM signature and seal, PSM designee signature from the Office of Survey and Mapping and signature from the Clerk of Court). Also, the book of plats identifying book/ pages must be included on the cover sheet of surveyor's plat above the signature of the Clerk of Court pursuant 161.181 Florida Statutes.