

MANGROVE TRIMMING AND PRESERVATION
PINELLAS COUNTY, FLORIDA

PINELLAS COUNTY LAND DEVELOPMENT CODE
SECTIONS 166-96 THROUGH 166-110



Adopted by the Pinellas County Board of County Commissioners
May 20, 2003

Administered by the Pinellas County Department of Environmental Management

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SECTION 1. Chapter 166, Division 3, entitled "Mangrove Trimming and Preservation" is hereby replaced in its entirety, as follows:

Sec. 166-96. Findings.

(a) The Board finds that there are over 555,000 acres of mangroves now existing in Florida. Of this total, over 80 percent are under some form of government or private ownership or control and are expressly set aside for preservation or conservation purposes. The Board also finds that the vast majority of these mangroves are located at the southern end of the State and do not provide the direct ecological benefits to Pinellas County that the local mangroves do, estimated at 18,800 acres for the Tampa Bay area and 6,500 acres for Pinellas County.

(b) The Board finds that mangroves play an important ecological role as habitat for various species of marine and estuarine vertebrates, invertebrates, and other wildlife, including mammals, birds, and reptiles; as shoreline stabilization and storm protection; and for water quality protection and maintenance and as food-web support. The mangrove forest is a tropical ecosystem that provides nursery support to the sports and commercial fisheries. Through a combination of functions, mangroves contribute to the economies of many coastal counties in the state, including Pinellas County, which has an economy strongly dependent on tourism and a variety of marine-related industries, most of which are closely correlated to a healthy natural environment and strong fisheries. In addition, Pinellas County's coastal environment and natural resources are a strong attractant for both businesses and residents.

(c) The Board finds that since 1950, approximately half of the Tampa Bay area's natural shoreline has been adversely impacted, with some areas of Pinellas County having lost almost half of their mangroves in that same time frame.

(d) The Board finds that the Pinellas County Comprehensive Plan and the Comprehensive Conservation and Management Plan for Tampa Bay ("Charting the Course") both support the protection, conservation and restoration of marine resources and habitats, including mangroves.

(e) The Board finds that the pruning of mangroves can affect their productivity and habitat value.

(f) The Board finds that many areas of mangroves occur as narrow riparian mangrove fringes that do not provide all the functions of mangrove forests or provide such functions to a lesser degree.

(g) The Board finds that water views are important to waterfront property owners and that scientific studies have shown that mangroves are amenable to standard horticultural treatments and that waterfront property owners can live in harmony with mangroves by incorporating such treatments into their landscaping systems.

(h) The Board finds that the trimming of mangroves by professional mangrove trimmers has a significant potential to maintain the beneficial attributes of mangrove resources and that professional mangrove trimmers should be authorized to conduct mangrove trimming, as contained herein, without prior government authorization.

Sec. 166-97. Intent.

(a) It is the intent of the Board to protect and preserve mangrove resources valuable to our environment and economy from unregulated removal, defoliation, and destruction.

(b) It is the intent of the Board that no trimming or alteration of mangroves may be permitted on uninhabited islands which are publicly owned or on lands set aside for conservation and preservation, or mitigation, except where necessary to protect the public health, safety, and welfare, or to enhance public use of, or access to, conservation areas in accordance with management plans approved by the State, County or Municipality.

(c) It is the intent of the Board to provide waterfront property owners their riparian right of view, and other rights of riparian property ownership as recognized by s. 253.141, Florida Statutes, and any other provision of law, by allowing mangrove trimming in riparian mangrove fringes without prior government approval when the trimming activities will not result in the removal, defoliation, or destruction of the mangroves.

(d) It is the intent of the Board to also allow mangrove trimming at waterfront properties with mangroves that do not qualify as riparian mangrove fringes, where such trimming can be done consistent with the specific criteria of this division.

(e) It is the intent of the Board that this division shall be administered so as to encourage waterfront property owners to voluntarily maintain mangroves, encourage mangrove growth, and plant mangroves along their shorelines.

(f) It is the intent of the Board that all trimming of mangroves pursuant to this act conducted on parcels having multifamily residential units result in an equitable distribution of the riparian rights provided herein.

(g) It is the intent of the Board to grandfather certain historically established mangrove maintenance activities.

Sec. 166-98. Authority for division.

(a) Sections 166-96 through 166-110 and any lawful regulations adopted by a local government that receives a delegation of the department's authority to administer and enforce the regulation of mangroves as provided by this section shall be the sole regulations in this county for the trimming and alteration of mangroves on privately or publicly owned lands. All other state and local regulation of mangrove is as provided in subsection (b).

(b) The Florida Department of Environmental Protection (FDEP) has delegated its authority to regulate the trimming and alteration of mangroves to Pinellas County which requested such delegation and demonstrated to the FDEP that it has sufficient resources and procedures for the adequate administration and enforcement of a delegated mangrove-regulatory program. The county may, through interlocal agreement, further delegate the authority to administer and enforce regulation of mangrove trimming and alteration to municipalities that can also demonstrate that they have sufficient resources and procedures for the adequate administration and enforcement of a delegated mangrove-regulatory program. In no event shall more than one permit for the alteration or trimming of mangroves be required within the jurisdiction of any delegated local government.

(c) The FDEP may biannually review the performance of the county's program and, upon a determination by the FDEP that the county has failed to properly administer and enforce the program, may seek to revoke the authority under which the program was delegated. The FDEP shall provide the county with written notice of its intent to revoke the authority to operate a delegated program. The FDEP's revocation of the authority to operate a delegated program is subject to review under chapter 120.

(d) The county shall issue all permits required by law and in lieu of any FDEP permit provided for by ss. 403.9321-403.9333, Florida Statutes. The availability of the exemptions to trim mangroves in riparian mangrove fringe areas provided in s. 403.9326, Florida Statutes, may not be restricted or qualified in any way by any local government. This subsection does not preclude a delegated local government from imposing stricter substantive standards or more demanding procedural requirements for mangrove trimming or alteration outside of riparian mangrove fringe areas.

Sec. 166-99. Territory embraced.

This division shall be effective in the incorporated as well as unincorporated areas of the county.

Sec. 166-100. Definitions. For the purposes of this division, the term:

Alter means anything other than trimming of mangroves including removal, destruction or defoliation of mangroves.

Board means the Pinellas County Board of County Commissioners.

Defoliate means the removal of leaves by cutting or other means to the degree that the plant's natural functions have been severely diminished or which results in the death of all or part of the tree.

Department means the Pinellas County Department of Environmental Management.

Local government means a county or municipality.

Maintenance means the first and subsequent trimming intended to maintain the height and configuration of a mangrove area that was legally trimmed either pursuant to a valid exemption or a previously issued permit from the appropriate governmental agency. However, where a pattern of trimming has stopped such that the view or use otherwise intended and obtained by the trimming has been broken or lost for a prolonged period of time, further trimming will not be considered maintenance.

Mangrove means any specimen of the species *Laguncularia racemosa* (white mangrove), *Rhizophora mangle* (red mangrove), or *Avicennia germinans* (black mangrove).

Mangroves on lands that have been set aside as mitigation means mangrove areas on public or private land which have been created, enhanced, restored, or preserved as mitigation under a dredge and fill permit issued under ss. 403.91-403.929, Florida Statutes (1984 Supplement, as amended), or a dredge and fill permit, management and storage of surface waters permit, or environmental resource permit issued under part IV of chapter 373, applicable dredge and fill licenses or permits issued by a local government, a resolution of an enforcement action, or a conservation easement that does not provide for trimming.

Professional mangrove trimmer means a person who meets the qualifications set forth in sec. 166-104.

Public lands set aside for conservation or preservation means:

- (1) Conservation and recreation lands under chapter 259, Florida Administrative Code;
- (2) State and national parks;
- (3) State and national reserves and preserves, except as provided in s. 403.9326(3), Florida Statutes;
- (4) State and national wilderness areas;
- (5) National wildlife refuges (only those lands under Federal Government ownership);
- (6) Lands acquired through the Water Management Lands Trust Fund, Save Our Rivers Program;
- (7) Lands acquired under the Save Our Coast program;
- (8) Lands acquired under the environmentally endangered lands bond program;
- (9) Public lands designated as conservation or preservation under a local

- government comprehensive plan;
- (10) Lands purchased by a water management district, the Fish and Wildlife Conservation Commission, or any other state agency for conservation or preservation purposes;
 - (11) Public lands encumbered by a conservation easement that does not provide for the trimming of mangroves; and
 - (12) Public lands designated as critical wildlife areas by the Fish and Wildlife Conservation Commission.

Riparian mangrove fringe means mangroves growing along the shoreline on private property, property owned by a governmental entity, or sovereign submerged land, the depth of which does not exceed 50 feet as measured waterward from the trunk of the most landward mangrove tree in a direction perpendicular to the shoreline to the trunk of the most waterward mangrove tree. Riparian mangrove fringe does not include mangroves on uninhabited islands, or public lands that have been set aside for conservation or preservation, or mangroves on lands that have been set aside as mitigation, if the permit, enforcement instrument, or conservation easement establishing the mitigation area did not include provisions for the trimming of mangroves.

Trim means to cut mangrove branches, twigs, limbs, and foliage, but does not mean to remove, defoliate, or destroy the mangroves.

Sec. 166-101. Exemptions.

(a) The following activities are exempt from the permitting requirements of this division and any other provision of law if no herbicide or other chemical is used to remove mangrove foliage:

(1) Mangrove trimming in riparian mangrove fringe areas that meet the following criteria:

1. The riparian mangrove fringe must be located on lands owned or controlled by the person who will supervise or conduct the trimming activities or on sovereign submerged lands immediately waterward and perpendicular to the lands.

2. The mangroves that are the subject of the trimming activity may not exceed 10 feet in pretrimmed height as measured from the substrate and may not be trimmed so that the overall height of any mangrove is reduced to less than 6 feet as measured from the substrate.

This exemption applies to property with a shoreline of 150 feet or less. Owners of property with a shoreline of more than 150 feet may not trim, under an exemption, more than 65 percent of the mangroves along the shoreline.

(2) Mangrove trimming supervised or conducted exclusively by a professional mangrove trimmer, as defined in sec. 166-104, in riparian mangrove fringe areas that meet the following criteria:

1. The riparian mangrove fringe must be located on lands owned or controlled by the professional mangrove trimmer or by the person contracting with the professional mangrove trimmer to perform the trimming activities, or on sovereign submerged lands immediately waterward and perpendicular to such lands.

2. The mangroves that are the subject of the trimming activity may not exceed 24 feet in pretrimmed height and may not be trimmed so that the overall height of any mangrove is reduced to less than 6 feet as measured from the substrate.

3. The trimming of mangroves that are 16 feet or greater in pretrimmed height must be conducted in stages so that no more than 25 percent of the foliage is removed annually.

4. A professional mangrove trimmer that is trimming red mangroves for the first time under the exemption provided by this paragraph must notify the department or delegated local government in writing at least 10 days before commencing the trimming activities.

This exemption applies to property with a shoreline of 150 feet or less. Owners of property with a shoreline of more than 150 feet may not trim, under an exemption, more than 65 percent of the mangroves along the shoreline.

(3) Mangrove trimming in riparian mangrove fringe areas which is designed to reestablish or maintain a previous mangrove configuration if the mangroves to be trimmed do not exceed 24 feet in pretrimmed height. The reestablishment of a previous mangrove configuration must not result in the destruction, defoliation, or removal of mangroves. Documentation of a previous mangrove configuration may be established by affidavit of a person with personal knowledge of such configuration, through current or past permits from the state or local government, or by photographs of the mangrove configuration. Trimming activities conducted under the exemption provided by this paragraph shall be conducted by a professional mangrove trimmer when the mangroves that are the subject of the trimming activity have a pretrimmed height which exceeds 10 feet as measured from the substrate. A person trimming red mangroves for the first time under the exemption provided by this paragraph must notify the department or delegated local government in writing at least 10 days before commencing the trimming activities.

(4) The maintenance trimming of mangroves that have been previously trimmed in accordance with an exemption or government authorization, including those mangroves that naturally recruited into the area and any mangrove growth that has expanded from the area subsequent to the authorization, if the maintenance trimming does not exceed the height and configuration previously established. Historically established maintenance trimming is grandfathered in all respects, notwithstanding any other provisions of law. Documentation of established mangrove configuration may be verified by affidavit of a person with personal knowledge of the configuration or by photographs of the mangrove configuration.

(5) The trimming of mangrove trees by a state-licensed surveyor in the performance of her or his duties, if the trimming is limited to a swath of 3 feet or less in width.

(6) The trimming of mangrove trees by a duly constituted communications, water, sewerage, electrical, or other utility company, or by a federal, state, county, or municipal agency, or by an engineer or a surveyor and mapper working under a contract with such utility company or agency, when the trimming is done as a governmental function of the agency.

(7) The trimming of mangrove trees by a duly constituted communications, water, sewerage, electrical, or other utility company in or adjacent to a public or private easement or right-of-way, if the trimming is limited to those areas where it is necessary for the maintenance of existing lines or facilities or for the construction of new lines or facilities in furtherance of providing utility service to its customers and if work is conducted so as to avoid any unnecessary trimming of mangrove trees.

(8) The trimming of mangrove trees by a duly constituted communications, water, sewerage, or electrical utility company on the grounds of a water treatment plant, sewerage treatment plant, or electric power plant or substation in furtherance of providing utility service to its customers, if work is conducted so as to avoid any unnecessary trimming of mangrove trees.

(9) The removal of dead portions of mangroves that have been freeze-damaged provided the following criteria are met:

1. A period of six months has elapsed since the freeze event.
2. All trimming of trees in excess of ten feet in height and all trimming below six feet from the substrate is conducted by or under the direct supervision of a professional mangrove trimmer.
3. All trimmed branches and trunks are removed from the wetlands.
4. The Department is notified in writing of the trimming and the professional mangrove trimmer to be used (if applicable) a minimum of ten days in advance of the trimming.

(b) Any rule, regulation, or other provision of law must be strictly construed so as not to limit directly or indirectly the exemptions provided by this section for trimming in riparian mangrove fringe areas except as provided in secs. 166-104(f), (g) and (h). Any rule or policy of the department, or local government regulation, that directly or indirectly serves as a limitation on the exemptions provided by this section for trimming in riparian mangrove fringe areas is invalid.

(c) The designation of riparian mangrove fringe areas as aquatic preserves or Outstanding Florida Waters shall not affect the use of the exemptions provided by this section.

(d) Trimming that does not qualify for an exemption under this section requires a permit as provided in sec. 166-102.

Sec. 166-102. Trimming of mangroves; permit requirement.

(a) The department shall authorize mangrove trimming via a permit issued pursuant to this section, provided the trimming is consistent with the following criteria:

(1) The mangroves to be trimmed are located on lands owned or controlled by the applicant or on sovereign submerged lands immediately waterward and perpendicular to such lands;

(2) The mangroves to be trimmed are not located on uninhabited islands which are publicly owned or on lands set aside for conservation and preservation, or mitigation, except where necessary to protect the public health, safety, and welfare, or to enhance public use of, or access to, conservation areas in accordance with management plans approved by the State, County or Municipality.

(3) The trimming of mangroves over 10 feet in height is supervised or conducted exclusively by a professional mangrove trimmer;

(4) The mangroves subject to trimming under the permit do not extend more than 500 feet waterward as measured from the trunk of the most landward mangrove tree in a direction perpendicular to the shoreline;

(5) No more than 65 percent of the area (footprint) of mangroves at the subject site will be trimmed. Also, at least 25 percent of the mangroves in the trimmed area that are over 16 feet in pre-trimmed height may not be reduced in height. These trees, however, may be laterally trimmed provided that no portion of their canopies above 12 feet from the substrate is trimmed.

(6) No mangrove will be trimmed so that the overall height of any mangrove is reduced to less than 6 feet as measured from the substrate;

(7) No herbicide or other chemical will be used for the purpose of removing leaves of a mangrove;

(8) The trimming does not result in the removal, destruction, or defoliation of the mangroves;

(9) All trimming of mangroves in excess of 16 feet in height must be conducted in stages so that no more than 25 percent of the pretrimmed foliage or height of the trees is removed annually. Regrowth from the previous year's trimming may be trimmed in addition to the 25% mentioned above;

(10) Trimming may only be conducted from March 1 through November 30;

(11) Only non-petroleum based lubricants must be used in chainsaws; and

(12) All Brazilian pepper trees (*Schinus terebinthifolius*), punk trees (*Melaleuca quinquenervia*) and Chinese tallow (*Sapium sebiferum*) that are within 25 feet of the mangrove canopy must be removed from the applicant's property. Where the removal is to a degree that a potential for erosion is created, the area must be restabilized. Stumps and roots may be killed and left in place if desired.

(13) All trimmed branches and trunks are removed from the wetlands.

(b) The height and configuration of mangroves trimmed under permits issued pursuant to this section may be maintained under sec. 166-101(a)(4).

(c) Requests for permits to trim mangroves must be submitted on the Department's application form and must contain sufficient information to enable the department to determine the scope of the proposed trimming and whether the activity will comply with the conditions of this section.

(d) The department shall grant or deny in writing each request for a permit within 30 days after receipt of a complete application, unless the applicant agrees to an extension. If the applicant does not agree to an extension and the department fails to act on the request within the 30-day period, the request is approved. The department's denial of a request for a permit is subject to appeal under sec. 166-107.

Sec. 166-103. Alteration of mangroves; permit requirement.

(a) The department, when deciding to issue or deny a permit for mangrove alteration under this section, shall use the criteria in s. 373.414(1) and (8), Florida Statutes, as follows:

- (1) Whether the activity will adversely affect the public health, safety, or welfare or the property of others;
- (2) Whether the activity will adversely affect the conservation of fish and wildlife, including endangered or threatened species, or their habitats;
- (3) Whether the activity will adversely affect navigation or the flow of water or cause harmful erosion or shoaling;
- (4) Whether the activity will adversely affect the fishing or recreational values or marine productivity in the vicinity of the activity;
- (5) Whether the activity will be of a temporary or permanent nature;
- (6) Whether the activity will adversely affect archaeological resources under the provisions of s. 267.061, Florida Statutes;
- (7) The current condition and relative value of functions being performed by areas affected by the proposed activity; and
- (8) The cumulative impact of similar activities pursuant to s. 373.414(8), Florida Statutes.

(b) If the applicant is unable to meet these criteria, the department and the applicant shall first consider measures to reduce or eliminate the unpermissible impacts. If unpermissible impacts still remain, the applicant may propose, and the department shall consider, measures to mitigate the otherwise unpermissible impacts.

(c) A request for a permit to alter mangroves must be submitted on the Department's application form and with sufficient specificity to enable the department to determine the scope and impacts of the proposed alteration activities.

(d) The use of herbicides or other chemicals for the purposes of removing leaves from a mangrove is strictly prohibited.

(e) A permit is not required under this division to trim or alter mangroves if the trimming or alteration is part of an activity that is permitted under part IV of chapter 373 or by the Pinellas County Water and Navigation Control Authority. The procedures for permitting under part IV of chapter 373 or by the Pinellas County Water and Navigation Control Authority will control in those instances.

Sec. 166-104. Professional mangrove trimmers.

(a) For purposes of this division, the following persons are considered professional mangrove trimmers:

(1) Certified arborists, certified by the International Society of Arboriculture;
(2) Professional wetland scientists, certified by the Society of Wetland Scientists;
(3) Certified environmental professionals, certified by the Academy of Board Certified Environmental Professionals;

(4) Certified ecologists certified by the Ecological Society of America;
(5) Landscape architects licensed under part II of chapter 481. Only those landscape architects who are certified in the state may qualify as professional mangrove trimmers under this division, notwithstanding any reciprocity agreements that may exist between this state and other states;

(6) Persons who have conducted mangrove trimming as part of their business or employment and who are able to demonstrate to the department or a delegated local government, as provided in subsection (b), a sufficient level of competence to assure that they are able to conduct mangrove trimming in a manner that will ensure the survival of the mangroves that are trimmed; and

(7) Persons who have been qualified by the county or a delegated local government through a mangrove-trimming qualification program as provided in subsection (b).

(b) A person who seeks to assert professional mangrove trimmer status under paragraphs (a)(6) or (7) to trim mangroves under the exemptions and permits provided in secs. 166-101 and 166-102, must request in writing professional mangrove trimmer status from the department. The department shall grant or deny any written request for professional mangrove trimmer status within 30 days after receipt of a complete application. If professional mangrove trimmer status has been granted by the department, no additional requests for professional mangrove trimmer status need be made to the department to trim mangroves under the exemptions provided in sec. 166-101. Persons applying for professional mangrove trimmer status must provide to the department a notarized sworn statement attesting:

(1) That the applicant has successfully conducted trimming on a minimum of 10 mangrove-trimming projects authorized by the Florida Department of Environmental Protection or a local government program. Each project must be separately identified by project name, professional mangrove trimmer and permit number where applicable;

(2) That a mangrove-trimming or alteration project of the applicant is not in violation of ss. 403.9321-403.9333, Florida Statutes, this division, or any lawful rules adopted thereunder; and

(3) That the applicant possesses the knowledge and ability to correctly identify mangrove species occurring in this state.

(c) The department may deny a request for professional mangrove trimmer status if the department finds that the information provided by the applicant is incorrect or incomplete, or if the applicant has demonstrated a past history of noncompliance with the provisions of ss. 403.9321-403.9333, Florida Statutes, this division, or any adopted mangrove rules.

(d) A professional mangrove trimmer status granted by the department may be revoked by the department for any person who is responsible for any violations of ss. 403.9321-403.9333, Florida Statutes, this division, or any adopted mangrove rules.

(e) The department's decision to grant, deny, or revoke a professional mangrove trimmer status is subject to appeal under sec. 166-107.

(f) All professional mangrove trimmers working in Pinellas County must register with the department by paying an annual registration fee and by demonstrating that they meet the criteria of sec. 166-104. The fee for first time registration shall be \$50.00 and annual renewals thereafter shall be \$25.00.

(g) All professional mangrove trimmers working in Pinellas County must notify the department prior to conducting any mangrove trimming or alteration including those activities authorized under the exemptions provided by sec. 166-101.

(h) All professional mangrove trimmers working in Pinellas County must be on site when mangrove trimming activities are performed under their supervision.

(i) Any local governmental regulation imposed on professional mangrove trimmers that has the effect of limiting directly or indirectly the availability of the exemptions provided by sec. 166-101 is invalid.

Sec. 166-105. Mitigation and enforcement.

(a) A person may not alter or trim, or cause to be altered or trimmed, any mangrove within the landward extent of wetlands and other surface waters, as defined in chapter 62-340.200(19), Florida Administrative Code, using the methodology in s. 373.4211, Florida Statutes, and chapter 62-340, Florida Administrative Code, when the trimming does not meet the criteria in sec. 166-101 except under a permit issued under secs. 166-102 or 166-103 by the department or as otherwise provided by this division. Any violation of this division is presumed to have occurred with the knowledge and consent of any owner, trustee, or other person who directly or indirectly has charge, control, or management, either exclusively or with others, of the property upon which the violation occurs. However, this presumption may be rebutted by competent, substantial evidence that the violation was not authorized by the owner, trustee, or other person.

(b) Any area in which 5 percent or more of the trimmed mangrove trees have been trimmed below 6 feet in height, except as provided in secs. 166-101(a)(3), (4), (6), (7), (8) and (9), destroyed, defoliated, or removed as a result of trimming conducted under secs. 166-101 or 166-102 must be restored or mitigated. Restoration must be accomplished by replanting mangroves within six months, in the same location and of the same species as each mangrove destroyed, defoliated, removed, or trimmed, to achieve within 5 years a canopy area equivalent to the area destroyed, removed, defoliated, or trimmed; or mitigation must be accomplished by replanting offsite, in areas suitable for mangrove growth, mangroves to achieve within 5 years a canopy area equivalent to the area destroyed, removed, defoliated, or trimmed. Where all or a portion of the restoration or mitigation is not practicable, as determined by the department or delegated local government, the impacts resulting from the destruction, defoliation, removal, or trimming of the mangroves must be offset by donating a sufficient amount of money to offset the impacts, which must be used for the restoration, enhancement, creation, or preservation of mangrove wetlands within a restoration, enhancement, creation, or preservation project approved by the department or delegated local government; or by purchasing credits from a mitigation bank created under s. 373.4135, Florida Statutes, at a mitigation ratio of no less than 2-to-1 and no greater than 5-to-1 credits to affected area. The donation must be equivalent to the cost, as verified by the department or delegated local government, of creating mangrove wetlands at no less than a 2-to-1 and no greater than a 5-to-1, created versus affected ratio, based on canopy area. The donation may not be less than \$4 per square foot of created wetland area.

(c) In all cases, the applicant, permittee, landowner, and person performing the trimming are jointly and severally liable for performing restoration under paragraph (b) and for ensuring that the restoration successfully results in a variable mangrove community that can offset the impacts caused by the removal, destruction, or defoliation of mangroves. The applicant, landowner, and person performing the trimming are also jointly and severally subject to penalties.

(d) If mangroves are to be trimmed or altered under a permit issued under sec. 166-103, the department or delegated local government may require mitigation. The department or delegated local government shall establish reasonable mitigation requirements that must include, as an option, the use of mitigation banks created under s. 373.4135, Florida Statutes, where appropriate. The department's mitigation requirements must ensure that payments received as mitigation are sufficient to offset impacts and are used for mangrove creation, preservation, protection, or enhancement.

(e) Any replanting for restoration and mitigation under this subsection must result in at least 80 percent survival of the planted mangroves 1 year after planting. If the survival requirement is not met, additional mangroves must be planted and maintained until 80 percent survival is achieved 1 year after the last mangrove planting.

(f) The department or delegated local government shall enforce the provisions of this division in the same manner and to the same extent provided for in ss. 403.141 and 403.161, Florida Statutes, for the first violation, which includes, but is not limited to, the imposition of a civil penalty in an amount of not more than \$10,000 per offense along with restoration of the mangroves consistent with the criteria of subsection (b) above.

(g) For second and subsequent violations, the department or delegated local government, in addition to the provisions of ss. 403.141 and 403.161, Florida Statutes, shall impose additional monetary penalties for each mangrove illegally trimmed or altered as follows:

(1) Up to \$100 for each mangrove illegally trimmed; or

(2) Up to \$250 for each mangrove illegally altered.

(h) In addition to the penalty provisions provided in subsections (b)-(g), for second and all subsequent violations by a professional mangrove trimmer, the department or delegated local government shall impose a separate penalty upon the professional mangrove trimmer up to \$250 for each mangrove illegally trimmed or altered.

(i) Violations of this division are also subject to the provisions of sec. 134-8 which includes, but is not limited to, a fine not to exceed \$500 for violation of local ordinance.

(j) Each day of the violation of the provision(s) of this division shall constitute a separate offense.

(k) In addition to the sanctions contained in this section, the county may take any other appropriate legal action, including, but not limited to, emergency injunctive action, to enforce the provisions of this division.

Sec. 166-106. Variance relief. Upon application, the department or delegated local government may grant a variance from the provisions of this division if compliance therewith would impose a unique and unnecessary hardship on the owner or any other person in control of the affected property. Relief may be granted upon demonstration that such hardship is not self-imposed and that the grant of the variance will be consistent with the general intent and purpose of this division. The department or delegated local government may grant variances as it deems appropriate.

Sec. 166-107. Appeals. Any person aggrieved by the findings of the department under this division may, within 30 days of such findings, petition for a hearing before the Board, stating in such petition the grounds upon which the department has erred in its findings and wherein such person is aggrieved by such findings. The Board may, in its discretion, grant

or deny such hearing. Failure to file an appeal as provided in this section shall constitute acceptance of the department's findings.

Sec. 166-108. Notice of Public Hearing. All public hearings scheduled before the Board pursuant to this division shall be advertised in a newspaper of general circulation at least two weeks prior to the public hearing. The cost of said advertisement will be the responsibility of the person requesting the hearing.

Sec. 166-109. Fees. All applications for mangrove trimming permits shall be accompanied by a fee to be set by the Board by resolution on an annual basis. Fees shall be sufficient to cover the cost of the review and issuance of the permit.

Sec. 166-110. Administration.

(a) Permits issued pursuant to secs. 166-102 and 166-103 shall expire one year from permit issuance if the project has not been completed, or if the initial trim has not been completed for those projects where trimming is to be phased in annually. Extensions may be granted by the department for good cause shown.

(b) The department may revoke any permit issued pursuant to secs. 166-102 and 166-103 for fraud, misrepresentation or violation of the conditions imposed on the permit. Written notice of the intent of the department to revoke a permit shall be provided to the applicant, setting forth the specific reasons for the revocation. Upon notice of the department's intent to revoke the permit, the applicant shall immediately cease all trimming and alteration activities on site. The applicant shall have thirty days to show cause why the permit should not be revoked.

(c) The department may issue a cease and desist order for any site where trimming or alteration has commenced and a permit has not been obtained but is required pursuant to this division. Any person receiving such an order for cessation of operations shall immediately comply with the requirements thereof. It shall be a violation of this division for any person to fail or to refuse to comply with a cease and desist order issued under the provisions of this section.

(d) The regulation of mangrove protection under this division is intended to be complete and effective without reference to or in compliance with other statutory or code provisions.