

Model Guidelines for Incorporation into Governing Documents for Planned Communities: Condominiums, Cooperatives and Homeowners' Associations: Sea Turtle Friendly Lighting Guidelines

LAST REVISED, APRIL 22, 2014

These Sea Turtle Friendly Lighting Guidelines (STFL Guidelines) for planned communities are divided into a number of sections to apply the general principles of Sea Turtle Friendly Lighting to all sources of artificial light affecting the beaches. Adding these guidelines, which serve as covenants, codes and restrictions to a community association's bylaws would provide additional, privately enforced, safeguards. Acquiring a building permit for new beach development could be conditioned upon the adoption of the STFL Guidelines into the original bylaws. Potential funding for existing development to retrofit their lighting to meet Sea Turtle Friendly Lighting standards can also provide an incentive for voluntary adoption of the guidelines by amendment to bylaws.

By adopting STFL Guidelines, an association can help minimize the harm to nesting sea turtles in their community. The Clinic attempted to create the most effective, yet concise set of guidelines possible for all parties to easily understand. The STFL Guidelines are intended to have broad applicability to both new and existing developments of single-family homes, condominiums, or other forms of ownership governed by an association. Additionally, the Clinic considered the perspective of developers, builders, and architects and worked to accommodate them by using standard industry language, while complying with the Florida Building Code standards. The Clinic sought to make the STFL Guidelines as comprehensive and comprehensible as possible by dividing the provisions between different specific locations on a typical property. However, the goal was to accomplish comprehensiveness without sacrificing aesthetic values and while avoiding the regulation of human behavior. Provisions such as "lights out" at a certain time are both unreliable and unpopular, and are no longer necessary provided a building incorporates the modern lighting technologies found within the STFL Guidelines. Therefore, developers and property owners wishing to include the STFL Guidelines in their legal documents, which may include a declaration of covenants, conditions, and restrictions (HOA) or Declaration of Condominium; articles of incorporation; bylaws; rules and restrictions; and architectural standards (collectively, "Governing Documents"), may be confident that the property will reduce harm to nesting sea turtles. Adopting the STFL Guidelines empowers associations to protect threatened and endangered sea turtles by reducing harmful light pollution. Moreover real dollar savings can be realized by employing new lighting technologies.

A. Overview of Planned Communities

Beachfront development has been a major force in Florida's economy for decades. Driven by the high demand to live on waterfront property, much of this development along the coastline is some form of predominantly residential construction. Whether single-family homes, cooperative apartments or condominiums, most are administered by an association with some level of enforcement capability for maintaining community standards as outlined in the Governing Documents. Memberships in such associations are usually mandatory though there are some homeowners' associations that are voluntary. Florida Statutes specifically permit the creation of associations and provide the applicable rules these legal entities operate under.¹ In general, an association is a registered corporation responsible for the governance of a particular community based on a set of documents created by the developer or the association members called Governing Documents. Florida Statutes also address the required and optional elements to be included in the Governing Documents.

Different forms of ownership, i.e. condominium, cooperative or HOA, call for a variety of materials to be included in the Governing Documents, but all ownership types permit restrictions on the use of property by owners in the association. For example, rules contained within condominium bylaws are a common device to, among other things, provide for "restrictions on and requirements for the use, maintenance, and appearance of the units and the use of the common elements."² If there is a provision within Governing Documents that are illegal or against public policy, that provision could be deemed invalid. In a planned community, each property owner, unit owner or tenant is governed by and must comply with the Governing Documents.³ The model STFL Guidelines are a set of covenants, conditions and restrictions that could be incorporated into the community's Governing Documents. Adding such provisions into a community's Governing Documents makes them enforceable as the "law" of the community, and they are permanent unless amended or repealed by the association or extinguished such as by termination or Marketable Record Title Act.⁴ If properly adopted, these model STFL Guidelines would run with the land and apply to subsequent owners. Associations generally have the power to fine or bring legal enforcement actions against any owners who are not in compliance with the community's Governing Documents.⁵

B. Incorporating These Rules into Associations

1) New Developments

Before construction of a new residential community commences, the developer is free to design any artificial lighting system that complies with the law. The inclusion of STFL

¹ See Chapter 617, Florida Statutes, for non-profit corporations, Chapter 718, Florida Statutes, for condominium associations, Chapter 719, Florida Statutes, for cooperative associations, and Chapter 720, Florida Statutes, for homeowner's associations.

² Fla. Stat. § 718.112 (3) (b) (2012)

³ Fla. Stat. § 718.303 (1) (2012); Fla. Stat. § 720.305 (1) (2012)

⁴ Donna Berger and Gary A. Poliakoff, *The Reinstatement of Covenants, Conditions, and Restrictions Extinguished by the Marketable Record Title Act*, 79 FL BAR JOURNAL 14 (2005). Accessed on May 28, 2013 <http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/8c9f13012b96736985256aa900624829/a8a8da7514a6718885256ff10060df88!OpenDocument>

⁵ See, e.g. Fla. Stat. § 718.111(3) (2012); Fla. Stat. § 720.303(1) (2012)

Guidelines should be incorporated into the Governing Documents at the inception of a project. Many developers retain amendment powers in Governing Documents prior to transition of control of an association so long as fundamental rights and obligations are not modified. Since these guidelines could be construed as an architectural design change, it is crucial that an attorney be consulted to determine the appropriate way to incorporate these guidelines into existing Governing Documents even for Developer's with liberal amendment powers.

2) The Amendment Process for Associations

Since the vast majority of associations whose lighting may affect sea turtle nesting are already in existence, incorporating the STFL Guidelines into existing Governing Documents is a key method of achieving compliance with existing laws and protection of sea turtles. Post-recording of a Declaration, the Developer often has some level of amendment power. Post transition of control of the association from the developer to the third party owners, amendments must ordinarily be adopted by a quorum of the members of an association. Quorum requirements vary greatly. In the event that the Governing Documents don't have an amendment procedure, the applicable Florida statute will likely provide substitute rules for amendments. It is necessary for existing communities to confer with their counsel to determine the applicable amendment process for incorporating the sea turtle guidelines as amendment processes vary greatly depending on the time of recording of the document and which document in the Governing Documents are to be amended. For example, many communities will want to adopt these guidelines as stand-alone rules. However, if a portion of the guidelines conflicts with a provision in a Declaration, the guideline or portion thereof will not be enforceable. Because many of the provisions in the guidelines relate to design guidelines it is necessary to carefully review all portions of the Governing Documents to ensure consistency and enforceability. Furthermore, the amendment process is an important tool due to its flexibility, which will allow for the community to continually update their lighting restrictions as Sea Turtle Friendly Lighting technology continues to improve. The model STFL Guidelines are set forth below.

Model Sea Turtle Friendly Lighting Guidelines

The goal of these guidelines is to educate coastal community residents on proper methods of lighting that protect nesting sea turtles on the beaches, while also ensuring the safety and security needs of nearby residents. By following three simple principles, *Keep it Low*, *Keep it Long*, and *Keep it Shielded*, a community can implement a lighting program that minimizes the harmful impacts of artificial light pollution on sea turtle habitats.

The first principle, ***Keep it Low***, refers to the mounting height of a lighting fixture, and it should be mounted as low as possible on the structure. This principle also refers to the amount of lumen output from the light source, which should be as low as possible for the intended purpose. The second principle, ***Keep it Long***, refers to the concept that sea turtles are less disturbed by longer wavelengths of light. The optimal wavelength is 580 nanometers greater. In order to achieve this principle, lamp fixtures should be fitted with long-wavelength bulbs such as amber or red LED bulbs. The final principle, ***Keep it Shielded***, refers to shielding the bulb, lamp, or glowing lens from view of the beach and using full-cut off fixtures to ensure that all the light is directed downward towards the ground and not out onto the beaches.

1. Definitions

- 1.1 **“Artificial light” means the light emanating from any human-made device.**⁶
- 1.2 **“Beach” means the zone of unconsolidated material that extends landward from the mean low water line to the place where there is marked change in material or physiographic form, or to the line of permanent vegetation.**⁷
- 1.3 **“Cumulatively”** means illumination by numerous artificial light sources that as a group illuminate any portion of the beach.
- 1.4 **“Directly illuminate”** means illumination as the result of an artificial light source and visible to an observer standing on the beach.
- 1.5 **“Dune” means any** mound, bluff or ridge of loose sediment, usually sand-sized sediment, lying upland of the beach and deposited by any natural or artificial mechanism, which may be bare or covered with vegetation and is subject to fluctuations in configuration and location.⁸
- 1.6 **“Fully shielded” means** a lighting fixture constructed in such a manner that all light emitted by the fixture, either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any part of the luminaire, is projected below the horizontal as determined by photometric test or certified by the manufacturer. Any structural part of the light fixture providing this shielding must be permanently affixed.⁹
- 1.7 **“Illuminate” means that more than zero footcandle of artificial light can be measured at any location.**
- 1.8 **“Indirectly illuminate” means** illumination as a result of artificial light source when artificial light source is not visible to an observer standing on the beach, but the lumen output is reaching the beach. This definition does not include illumination generated from interior lighting that conforms to the requirements of Section 2.7 of these guidelines (requiring tinted windows).
- 1.9 **“Long wavelength” means a luminaire emitting light wavelength of 580 nanometers or greater.****“Nesting season”** means the period from May 1 through October 31 of each year for all counties except Brevard, Indian River, St. Lucie, Martin, Palm Beach, and Broward. Nesting season for Brevard, Indian River, St. Lucie, Martin, and Palm Beach and Broward counties means the period from March 1 through October 31 of each year (*due to the earlier nesting times for Leatherback Sea Turtle in these counties*).¹⁰

⁶ Fla. Admin. Code 62B-55.002 (2012).

⁷ Fla. Admin. Code 62B-33.002 (2012)

⁸ Fla. Admin. Code 62B-33.002 (2012).

⁹ INTERNATIONAL DARK SKY ASSOCIATION, OUTDOOR LIGHTING CODE HANDBOOK, available at http://www.nofs.navy.mil/about_NOFS/staff/cbl/OLCHB1.14/lc-hb-v1-14.html#shieldrecog.

¹⁰ Fla. Admin. Code 62B-33.002 (2012).

- 1.10 “Nighttime”** means the locally effective time period between sunset and sunrise.¹¹
- 1.11 “Outdoor area”** means any portion of a property that could have an artificial light source not attached to a permanent structure, and is not primarily lighting a parking area or roadway.
- 1.12 “Sea turtle”** means any turtle, including all life stages from egg to adult, of the species: Green (*Chelonia mydas*), Leatherback (*Dermochelys coriacea*), Loggerhead (*Caretta Caretta*), Hawksbill (*Eretmochelys imbricata*), and Kemp's Ridley (*Lepidochelys kempi*).¹²
- 1.13 “Tinted glass”** means any glass treated to achieve an industry-approved, inside-to-outside light transmittance value. Such transmittance is limited to the visible spectrum (400-700 nanometers) and is measured as the percentage of light that is transmitted through the glass.

2. Exterior Lighting Affixed To Structures

- 2.1** All lighting affixed to the exterior of permanent structures shall be long wavelength and fully shielded.
- 2.2** All non-egress lighting affixed to the exterior of permanent structures shall not directly, indirectly, or cumulatively illuminate the beach.
- 2.3** Lighting at egress points shall be limited to the minimum number of fixtures and footcandles necessary to meet federal, state, and local safety requirements.¹³
- 2.4** Lighting affixed to the exterior of permanent structures shall consist of either¹⁴:
- 2.4.1** Wall or ceiling down-light fixtures, equipped with interior dark-colored, non-reflective baffles or louvers, mounted at a maximum height of eight feet above the adjacent floor or deck, as measured from the bottom of fixture, or
- 2.4.2** Louvered wall fixtures, equipped with downward-directed louvers that completely hide the light source, with the bottom of fixture mounted 12 inches or less above the adjacent floor or deck, or
- 2.4.3** Bollard-type fixtures, which do not extend more than 42 inches above the adjacent floor or deck, measured from the bottom of fixture, equipped with

¹¹ Fla. Admin. Code 62B-55.002 (2012).

¹² Fla. Admin. Code 62B-33.002 (2012).

¹³ See Fla. Building Code, Chapter 10, Section 1006.

¹⁴ [Adapted from] “Multi-Family, Public Facility and Commercial Lighting Guidelines” in MARINE TURTLE LIGHTING GUIDELINES, FLA. DEP’T OF ENVTL. PROT. (2013).

downward-directed louvers that completely hide the light source, and externally shielded on the side facing the beach.

- 2.5 Balcony lights on the seaward and shore-perpendicular sides of permanent structures shall be turned off at all times during nighttime in sea turtle nesting season.
- 2.6 Interior locations including but not limited to stairwells, elevators, parking garages, or courtyards that allow light to escape through windows or other openings shall not directly, indirectly, or cumulatively illuminate the beach.
- 2.7 All windows and glass doors on the seaward and shore-perpendicular sides of any structures shall be designed for a light transmittance value¹⁵ of 15% or less through the use of tinted glass, window film, or screens.
- 2.8 Emergency lights shall be on a separate circuit activated only during power outtages or other situations where emergency lighting is necessary for public safety.

3. Outdoor Areas

- 3.1 All lighting of outdoor areas shall be long wavelength and fully shielded.
- 3.2 Outdoor lighting that projects light upward shall be strictly prohibited.
- 3.3 Lighting of outdoor areas shall consist of either¹⁶:
 - 3.3.1 Ground-level downward-directed fixtures, equipped with interior dark-colored, non-reflective baffles or louvers, mounted either with a wall mount on walls or piles facing away from the beach, or
 - 3.3.2 Bollard-type fixtures, which do not extend more than 42 inches above the adjacent floor or deck, measured from the bottom of fixture, equipped with downward-directed louvers that completely hide the light source, and externally shielded on the side facing the beach.
- 3.4 Lighted signs shall not be located on the seaward and shore-perpendicular sides of any structures, and sign lighting shall not directly, indirectly, or cumulatively illuminate the beach.
- 3.5 Pond lights and fountain lights shall not be located on the seaward and shore-perpendicular sides of any structures, and shall not directly, indirectly, or cumulatively illuminate the beach.
- 3.6 Fire pits shall be located landward of the of the primary dune and shielded so that they do not directly, indirectly, or cumulatively illuminate the beach.

¹⁵ *Light Transmittance Value* means the percentage of light that is transmitted through the glass from the inside to the outside of the window or door. See Fla. Admin. Code 62B-55.002 (20) (2012).

¹⁶ [Adapted from] "Landscape Lighting Guidelines" in MARINE TURTLE LIGHTING GUIDELINES, FLA. DEP'T OF ENVTL. PROT. (2013).

4. Parking Areas and Roadways

- 4.1** All lighting of parking areas and roadways shall be long wavelength and fully shielded.
- 4.2** Parking area and roadway lighting shall be shielded from the beach using vegetation, natural features or artificial structures rising from the ground which prevent artificial light sources, including but not limited to vehicular headlights, from directly, indirectly, or cumulatively illuminating the beach¹⁷.
- 4.3** Lighting of roadways shall produce no more than 1.0 footcandles of light in any location.¹⁸
- 4.4** Lighting of parking areas and roadways shall consist of either¹⁹:
 - 4.4.1** Ground-level downward-directed fixtures, equipped with interior dark-colored, non-reflective baffles or louvers, mounted either with a wall mount on walls or piles facing away from the beach, or
 - 4.4.2** Bollard-type fixtures, which do not extend more than 42 inches above the adjacent floor or deck, measured from the bottom of fixture, equipped with downward-directed louvers that completely hide the light source, and externally shielded on the side facing the beach, or
 - 4.4.3** Pole-mounted lights, if required, which shall adhere to the restrictions located in section 4.6.
- 4.5** Pole-mounted lights shall only be used in parking areas and roadways when mounting the lights at lower elevations cannot practicably comply with minimum light levels set forth in applicable state and federal laws, rules, and regulations designed to protect public safety. If required, pole-mounted lights shall be:
 - 4.5.1** Located on the landward sides of buildings in locations that will not be directly, indirectly, or cumulatively illuminate the beach.
 - 4.5.2** Mounted no higher than 15 feet above the ground on arterial roadways or 20 feet above the ground if required on Department of Transportation right-of-ways²⁰, and
 - 4.5.3** Full cut-off, downward-directed onto non-reflective surfaces.
- 4.6** Equipment yards, storage yards, and temporary security lights shall also adhere to the

¹⁷ [Adapted from] "Parking Areas and Roadway Lighting Guidelines" in MARINE TURTLE LIGHTING GUIDELINES, FLA. DEP'T OF ENVTL. PROT. (2013).

¹⁸ See Florida Department of Transportation, "Topic #625-000-007, Plans Preparation Manual, Volume 1" Table 7.3.1 (Rev. 2013), available at <http://www.dot.state.fl.us/rddesign/PPMManual/2013/Volume1/2013Volume1.pdf>

¹⁹ [Adapted from] "Parking Areas and Roadway Lighting Guidelines" in MARINE TURTLE LIGHTING GUIDELINES, FLA. DEP'T OF ENVTL. PROT. (2013).

²⁰ *Id.*

lighting restrictions contained in this section.

5. Pool Areas

- 5.1.** Lighting of pool decks, pool facilities, swimming pools, and spas shall be long wavelength and fully shielded.
- 5.2.** Above-water lighting of pool decks, pool facilities, swimming pools, and spas shall be turned off during nighttime in sea turtle nesting season when closed. The use of an automatic timer is acceptable.
- 5.3.** Above-water lighting of pool decks, pool facilities, swimming pools, and spas shall otherwise adhere to the applicable requirements for acceptable light fixtures contained in Section 2 and Section 3 of this part.
- 5.4.** Underwater lighting of pools or spa light shall:
 - 5.4.1.** Be downward-directed,
 - 5.4.2.** Not directly, indirectly, or cumulatively illuminating the beach, and
 - 5.4.3.** Providing no more than 0.5 foot candles of light above the water surface.

6. Pier Structures

- 6.1.** Lighting of pier structures projecting over the beach or over water shall be long wavelength and fully shielded.
- 6.2.** Lighting of pier structures projecting over the beach or over water shall be mounted as low to the deck as possible to prevent light pollution or spillage beyond the walking surface.
- 6.3.** Lighting of pier structures projecting over the beach or over water shall consist of:²¹
 - 6.3.1.** Recessed railing down-light fixtures, equipped with downward-directed louvers and interior dark-colored, non-reflective baffles, or
 - 6.3.2.** Bollard-type fixtures, which do not extend more than 42 inches above the adjacent floor or deck, measured from the bottom of fixture, equipped with downward-directed louvers that completely hide the light source, and externally shielded on the side facing the beach, or
 - 6.3.3.** Embedded lighting systems.

7. Dune Crossovers and Beach Access Points

²¹ [Adapted from] "Pier Lighting" in MARINE TURTLE LIGHTING GUIDELINES, FLA. DEP'T OF ENVTL. PROT. (2013).

7.1. Lighting of dune crossovers and beach access points shall be prohibited.²²

8. Special Events, Motor Vehicles, and Temporary Lighting

8.1. Lighting associated with a special event that may directly, indirectly, or cumulatively illuminate the beach shall not be authorized during nighttime in nesting season.

8.2. The operation of all motorized vehicles, except emergency and law enforcement vehicles or those permitted on the beach for sea turtle conservation or other research and conservation, shall be prohibited on the beach at nighttime during nesting season.²³

8.3. All temporary construction lighting shall be:²⁴

8.3.1. Long wavelength and fully shielded,

8.3.2. Turned off during nighttime in nesting season, or if temporary lighting is deemed necessary during nesting season it shall be allowed from 6:00am to 9:00pm, must be restricted to the minimal amount necessary and shall incorporate all the standards of this section.

8.3.3. Not mounted more than eight feet above the ground, measured at the bottom of fixture, and

8.3.4. Restricted to the minimal number of footcandles necessary to conform to the applicable construction safety regulations.

²² The prohibition of lighting on dune crossovers and beach access points is the most protective approach for sea turtles and is recommended by the Florida Fish and Wildlife Conservation Commission, the agency responsible for lighting permit review. DEP's proposed *Marine Turtle Lighting Guidelines* section on Dune Crossovers and Beach Accesses currently provides for some lighting landward of the landward toe of the most seaward dune. Marine Turtle Lighting Guidelines, Florida Department of Environmental Protection (2013)(unpublished draft on file with the authors). Such a provision may be difficult to remain in compliance with - given the shifting nature of Florida's beach dune system.

²³ See BROWARD COUNTY, FLA., CODE § 46-97 (2012).

²⁴ [Adapted from] "General Lighting Guidelines" in MARINE TURTLE LIGHTING GUIDELINES, FLA. DEP'T OF ENVTL. PROT. (2013).