

ISSUE #1

6. No individual television antenna, radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of any structure within Bernard’s Landing. The provisions of this paragraph shall not prohibit Declarant (Developer) from installing equipment necessary for a master antenna system and mobile radio systems or other similar systems within Bernard’s Landing.
7. No trash, garbage, sewage, sawdust or any unsightly or offensive material shall be placed upon such Open Space Areas or Private Open Space Areas, except as is temporary and incidental to the bona fide improvement of the area in a manner consistent with its classification as open space.
8. The granting of the easement in Areas under this part in no way grants to the public or to the owners of any land outside Bernard’s Landing the right to enter such open space without the express permission of Declarant (Developer).
9. Declarant (Developer) expressly reserves to himself, his successors and assigns, every reasonable use and enjoyment of said open space, in a manner not inconsistent with the provisions of this Declaration.
10. Declarant (Developer) further reserves the right to convey “Common Areas”, “Recreational Areas”, “Open Space Areas” and “Private Open Space Areas” to The Association. Such conveyance shall be made subject to the provisions of this Part C. As an appurtenance to such conveyances, The Association shall have all of the powers, immunities and privileges reserved unto Declarant (Developer) in this part and all other parts of this Declaration as well as all of Declarant’s (Developer’s) obligations with respect thereto, including but not limited to the obligation to maintain and enhance as set out in paragraph 1 of this part.
11. Where Declarant (Developer) is permitted by these covenants to correct, repair, clean, preserve, clear out or do any action on the restricted property, entering the property and taking such action shall not be deemed a breach of these covenants.
12. It is expressly understood and agreed that the granting of the easements set out in this Part C in no way places a burden of affirmative action on Declarant (Developer),

MARKUP #1 ->

MARKUP #1 · CONFLICTS WITH FED LAW

BOARD & COUNSEL REVIEW

Sec. 2 (p. 14): Blanket ban, sub-1-meter size cap, or prior approval requirement on satellite dishes or antennas is preempted by federal FCC OTARD regulations.

Statutory / Legal Reference: 47 C.F.R. § 1.4000 (FCC OTARD Rule)

Statutory Comparison: The FCC Over-the-Air Reception Devices rule (47 C.F.R. § 1.4000, as expanded by the 2021 OTARD Report and Order, FCC 21-10) preempts community association restrictions that prohibit, charge application fees for, require prior architectural approval for, or impose sub-1-meter (39.37-inch) diameter caps on the installation, maintenance, or use of television broadcast antennas, direct-broadcast satellite dishes 1 meter or less in diameter, and fixed wireless broadband antennas (including hub and relay antennas) situated on property within the exclusive use or control of the owner/tenant.

CURRENT WORDING IN DOCUMENT:

No individual television antenna, radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of any structure within Bernard's Landing. The provisions of this paragraph shall not prohibit Declarant (Developer) from installing equipment necessary for a master antenna system and mobile radio systems or other similar systems within Bernard's Landing.

SAMPLE DISCUSSION WORDING (FOR HOA ATTORNEY REVIEW):

Provided that this restriction shall not prohibit or require prior approval for any owner or occupant installing an antenna, fixed wireless broadband hub/relay device, or satellite dish of one meter (39.37 inches) or less in diameter within areas under the owner's or occupant's exclusive use or control, in accordance with FCC OTARD regulations (47 C.F.R. § 1.4000).