

Coastal Construction Control Lines in Florida

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04.09.2025

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If you are buying or financing beachfront property in Florida, you should be aware of the state's Beach and Shore Preservation Act in Chapter 161, Florida Statutes. This Act was adopted by the legislature to regulate certain construction activities adjacent to the state's beaches and related coastal barrier dunes. The goal is to *"preserve and protect them from imprudent construction which can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access."*

Being informed can help ensure compliance, protect your investment, and contribute to the long-term sustainability of Florida's coastline.

What is the Coastal Construction Control Line?

The Act mandated the designation of a Coastal Construction Control Line (CCCL) by the Florida Department of Environmental Protection (FDEP). The CCCL is established along the sand beaches fronting the Atlantic Ocean, the Gulf of America/Mexico, and the Straits of Florida. It covers 825 miles of beaches across 25 coastal counties in Florida, identifying *"that portion of the state's beach-dune system which is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions."*

Any alteration, excavation or construction activities on land lying seaward of the CCCL, with certain exceptions, requires FDEP approval. FDEP also regulates activities within this area to protect marine turtles and dune plants. FDEP can require permits for certain activities and impose conditions on approved activities.

The Act applies to new construction on affected land, as well as certain reconstruction when existing improvements are damaged or destroyed. Anyone considering buying or making a mortgage loan on a beachfront property, whether improved or not, should ensure that the CCCL is located on a survey of the land in order to determine whether the Act may affect construction or reconstruction of improvements.

Seller Disclosure Requirements

Florida law (Section 161.57) requires that a seller of land affected by a CCCL disclose that fact to the buyer either in the contract for sale or a separate written instrument. The mandated disclosure form is as follows:

"The property being purchased may be subject to coastal erosion and to federal, state, or local regulations that govern coastal property, including the delineation of the coastal construction control line, rigid coastal protection structures, beach nourishment, and the protection of marine turtles. Additional information can be obtained from the Florida Department of Environmental Protection, including whether there are significant erosion conditions associated with the shoreline of the property being purchased."

Unless waived in writing by the buyer, the seller must provide to the buyer either an affidavit or a survey delineating the location of the CCCL on the affected land. Sellers usually negotiate to include such a waiver in the contract for sale, thereby shifting the responsibility to the buyers to obtain a survey showing the CCCL. Failure to comply with these requirements does not impair the enforceability of a contract for sale nor give the buyer a right to rescind the contract.

FDEP's website contains a map showing the location of the CCCL on all affected land in the state. It can be accessed using this link.

Understanding the CCCL's Impact

The CCCL is not a building setback line but a jurisdictional line used by FDEP to establish where it has authority to regulate construction activities on beachfront properties. While local governments (county or city) regulate construction on all beachfront land, FDEP additionally regulates construction on the beachfront land seaward of the CCCL.

FDEP will not necessarily prohibit construction in this area, although it does have the right to preclude construction that threatens the beach-dune system, including marine turtles and dune plants. When FDEP approves construction, it may impose conditions to protect the beach-dune system.

Key Concerns for Buyers and Lenders

A person buying or making a mortgage loan on beachfront land should be concerned about two particular issues related to the location of the CCCL, especially since beachfront property is among the most expensive in the state.

1. Storm Vulnerability

Because the CCCL identifies the portion of the land that FDEP has determined to be subject to 100-year storm surges, it serves as a good indicator of what portion of the land will be most adversely affected by a hurricane or other severe weather events. While storms vary in strength and there is no guarantee that adverse weather will only affect the portion of the land seaward of the CCCL, buying, building, or financing improvements entirely upland of the CCCL increases the chances that they will survive adverse weather events. If the improvements straddle or are entirely within the seaward side of the CCCL, you should be concerned about their survivability, as well as the availability and cost of casualty insurance.

2. Regulatory Oversight

If you intend to buy, build or finance improvements seaward of the CCCL, you should be prepared to deal with

FDEP. Existing improvements seaward of the CCCL may be “grandfathered” if they were built before the CCCL was established, allowing them to remain as-is. However, if they are damaged or destroyed, FDEP may impose conditions on their restoration. If FDEP previously approved improvements seaward of the CCCL, a buyer or lender should obtain and review the applicable permit(s) to ensure any conditions have been met and can continue to be followed. New improvements seaward of the CCCL are also regulated, so you should be prepared to seek approval from FDEP.

FDEP Exemptions

There are certain activities seaward of the CCCL that FDEP has exempted from its permitting requirement under the CCCL program. These include:

- **Modifications, maintenance or repairs** to existing structures that occur within the limits of the existing foundation (excluding changes to the foundation itself);
- **Minor activities** that do not adversely impact the beach-dune system, such as the installation of awnings, tie-downs or anchors to existing minor structures or trees, mono-post structures like umbrellas, antennae and light posts, minor maintenance of existing bulkheads and seawalls, certain landscaping, and similar activities. Note that specific conditions may apply to each exemption, which an owner should be prepared to address.

FDEP Permitting Considerations

FDEP has identified particular areas of concern when reviewing permit applications for improvements to be built seaward of the CCCL:

- Siting and Footprint: The location of all proposed structures will be carefully examined to minimize impacts on the beach-dune system;
- Foundation and Slab Structures: Even if the location is approved under the prior criteria, FDEP may require that major structures be elevated using piles to allow for the free flow of coastal floodwaters underneath them during storm events;
- Excavation: Excavation of material from the beach-dune system should be minimized, with any beach-compatible materials placed in a suitable location seaward of the CCCL, and incompatible materials removed from the site;
- Coastal Armoring: Coastal and shore protection structures like seawalls, revetments, and bulkheads inhibit the natural functioning of the beach-dune system, are discouraged, and will be closely scrutinized;
- Turtle Nesting: Beachfront activities can interfere with the movement of marine turtles, change the character of their nesting habitat, result in light pollution, and inhibit successful nesting, so FDEP may condition the nature, timing and sequence of approved activities to avoid these issues;
- Vegetation and Landscaping: FDEP discourages the removal of (or interference with) existing established dunes and the native salt-tolerant vegetation that protects them, traps and holds sand, inhibits wind and sand erosion, and allows the system to adjust to natural stresses, so any proposed activities must minimize these adverse impacts;
- Mitigation/Enhancement: FDEP will consider whether and to what extent it is appropriate to require an owner to offset the adverse impacts of its proposed improvements by engaging in dune restoration/enhancement activities, and/or special control measures during or after construction.

Recommendations for Due Diligence

A person buying or making a mortgage loan on beachfront land should be sure to have the CCCL located on a survey. It's important to carefully consider the potential impact of the CCCL on the existing and proposed use of the land, as well as its value and the insurability of improvements on the land. This should be done well before the purchase or loan closing, during an inspection or due diligence period. In addition to consulting an attorney about these issues, it may be worthwhile to consult a civil engineer who has worked with FDEP on the permitting of activities on land affected by the CCCL program.

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