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The 2004 Florida Statutes

[Title XI](#)
COUNTY ORGANIZATION AND
INTERGOVERNMENTAL RELATIONS

[Chapter 161](#)
BEACH AND SHORE
PRESERVATION

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161.053 Coastal construction and excavation; regulation on county basis.--

(1)(a) The Legislature finds and declares that the beaches in this state and the coastal barrier dunes adjacent to such beaches, by their nature, are subject to frequent and severe fluctuations and represent one of the most valuable natural resources of Florida and that it is in the public interest 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. In furtherance of these findings, it is the intent of the Legislature to provide that the department establish coastal construction control lines on a county basis along the sand beaches of the state fronting on the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida. Such lines shall be established so as to define that portion of the beach-dune system which is subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions. However, the department may establish a segment or segments of a coastal construction control line further landward than the impact zone of a 100-year storm surge, provided such segment or segments do not extend beyond the landward toe of the coastal barrier dune structure that intercepts the 100-year storm surge. Such segment or segments shall not be established if adequate dune protection is provided by a state-approved dune management plan. Special siting and design considerations shall be necessary seaward of established coastal construction control lines to ensure the protection of the beach-dune system, proposed or existing structures, and adjacent properties and the preservation of public beach access.

(b) As used in this subsection:

1. When establishing coastal construction control lines as provided in this section, the definition of "sand beach" shall be expanded to include coastal barrier island ends contiguous to the sand beaches of the state fronting on the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida.
2. "Coastal barrier island ends" means those areas on the ends of barrier islands fronting the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida, which are subject to severe fluctuations based on a 100-year storm surge, storm waves, or other predictable weather conditions.
3. "Coastal barrier islands" means geological features which are completely surrounded by marine waters that front upon the open waters of the Atlantic Ocean, the Gulf of Mexico, or the Straits of Florida and are composed of quartz sands, clays, limestone, oolites, rock, coral, coquina, sediment, or other material, including spoil disposal, which features lie above the line of mean high water. Mainland areas which were separated from the mainland by artificial channelization for the purpose of assisting marine commerce shall not be considered coastal barrier islands.

(c) Coastal construction control lines shall be set on coastal barrier island ends only in conjunction with the resetting of the coastal construction control line throughout the entire county within which the barrier island end is located, and shall not be established on reaches of coastal barrier island ends where the shore is vegetated with mangroves.

(2)(a) Coastal construction control lines shall be established by the department only after it has been determined from a comprehensive engineering study and topographic survey that the

establishment of such control lines is necessary for the protection of upland properties and the control of beach erosion. No such line shall be set until a public hearing has been held in each affected county. After the department has given consideration to the results of such public hearing, it shall, after considering ground elevations in relation to historical storm and hurricane tides, predicted maximum wave uprush, beach and offshore ground contours, the vegetation line, erosion trends, the dune or bluff line, if any exist, and existing upland development, set and establish a coastal construction control line and cause such line to be duly filed in the public records of any county affected and shall furnish the clerk of the circuit court in each county affected a survey of such line with references made to permanently installed monuments at such intervals and locations as may be considered necessary. However, no coastal construction control line shall be set until a public hearing has been held by the department and the affected persons have an opportunity to appear. The hearing shall constitute a public hearing and shall satisfy all requirements for a public hearing pursuant to s. [120.54\(3\)](#). The hearing shall be noticed in the Florida Administrative Weekly in the same manner as a rule. Any coastal construction control line adopted pursuant to this section shall not be subject to a s. [120.56\(2\)](#) rule challenge or a s. [120.54\(3\)\(c\)2](#). drawout proceeding, but, once adopted, shall be subject to a s. [120.56\(3\)](#) invalidity challenge. The rule shall be adopted by the department and shall become effective upon filing with the Department of State, notwithstanding the provisions of s. [120.54\(3\)\(e\)6](#). Upon such filing with the Department of State, no person, firm, corporation, or governmental agency shall construct any structure whatsoever seaward thereof; make any excavation, remove any beach material, or otherwise alter existing ground elevations; drive any vehicle on, over, or across any sand dune; or damage or cause to be damaged such sand dune or the vegetation growing thereon seaward thereof, except as hereinafter provided. Control lines established under the provisions of this section shall be subject to review at the discretion of the department after consideration of hydrographic and topographic data that indicate shoreline changes that render established coastal construction control lines to be ineffective for the purposes of this act or at the written request of officials of affected counties or municipalities. Any riparian upland owner who feels that such line as established is unduly restrictive or prevents a legitimate use of the owner's property shall be granted a review of the line upon written request. After such review, the department shall decide if a change in the control line as established is justified and shall so notify the person or persons making the request. The decision of the department shall be subject to judicial review as provided in chapter 120.

(b)1. The department shall exempt construction proposed for a location seaward of a coastal construction control line and landward of existing armoring from certain siting and design criteria of this chapter, provided the armoring is capable of protecting the proposed construction from the effects of erosion from a 100-year storm surge. The exemption shall apply to proposed structures involving the foundation, siting, and excavation criteria of this section, except such structures shall be:

- a. Sited a sufficient distance landward of the armoring to allow for maintenance of the armoring.
- b. Located up to or landward of the established line of construction.
- c. Designed to comply with the windload requirements of this section.
- d. Sited and designed to protect marine turtles.

2. The applicant shall provide scientific and engineering evidence that the armoring has been designed, constructed, and maintained to survive the effects of the design storm and provide protection to existing and proposed structures from the erosion associated with that event. Evidence shall include a report with data and supporting analysis, and shall be certified by a professional engineer registered in this state, that the armoring was designed and constructed and is in adequate condition to meet the following criteria:

- a. The top must be at or above the still water level, including setup, for the design storm plus the breaking wave calculated at its highest achievable level based on the maximum eroded beach

profile and highest surge level combination, and must be high enough to preclude runoff overtopping.

b. The armoring must be stable under the design storm including maximum localized scour, with adequate penetration and toe protection to avoid settlement, toe failure, or loss of material from beneath or behind the armoring.

c. The armoring must have sufficient continuity or return walls to prevent flanking under the design storm from impacting the proposed construction.

d. The armoring must withstand the static and hydrodynamic forces of the design storm.

(3) It is the intent of the Legislature that any coastal construction control line that has not been updated since June 30, 1980, shall be considered a critical priority for reestablishment by the department. In keeping with this intent, the department shall notify the Legislature if all such lines cannot be reestablished by December 31, 1997, so that the Legislature may subsequently consider interim lines of jurisdiction for the remaining counties.

(4) Any coastal county or coastal municipality may establish coastal construction zoning and building codes in lieu of the provisions of this section, provided such zones and codes are approved by the department as being adequate to preserve and protect the beaches and coastal barrier dunes adjacent to such beaches which are under the jurisdiction of the department from imprudent construction that will 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. Exceptions to locally established coastal construction zoning and building codes shall not be granted unless previously approved by the department. It is the intent of this subsection to provide for local administration of established coastal construction control lines through approved zoning and building codes where desired by local interests and where such local interests have, in the judgment of the department, sufficient funds and personnel to adequately administer the program. Should the department determine at any time that the program is inadequately administered, the department shall have authority to revoke the authority granted to the county or municipality.

(5) Except in those areas where local zoning and building codes have been established pursuant to subsection (4), a permit to alter, excavate, or construct on property seaward of established coastal construction control lines may be granted by the department as follows:

(a) The department may authorize an excavation or erection of a structure at any coastal location as described in subsection (1) upon receipt of an application from a property and/or riparian owner and upon the consideration of facts and circumstances, including:

1. Adequate engineering data concerning shoreline stability and storm tides related to shoreline topography;
2. Design features of the proposed structures or activities; and
3. Potential impacts of the location of such structures or activities, including potential cumulative effects of any proposed structures or activities upon such beach-dune system, which, in the opinion of the department, clearly justify such a permit.

(b) If in the immediate contiguous or adjacent area a number of existing structures have established a reasonably continuous and uniform construction line closer to the line of mean high water than the foregoing, and if the existing structures have not been unduly affected by erosion, a proposed structure may, at the discretion of the department, be permitted along such line on written authorization from the department if such structure is also approved by the department. However, the department shall not contravene setback requirements or zoning or building codes

established by a county or municipality which are equal to, or more strict than, those requirements provided herein. This paragraph does not prohibit the department from requiring structures to meet design and siting criteria established in paragraph (a) or in subsection (1) or subsection (2).

(c) The department may condition the nature, timing, and sequence of construction of permitted activities to provide protection to nesting sea turtles and hatchlings and their habitat, pursuant to s. [370.12](#), and to native salt-resistant vegetation and endangered plant communities.

(d) The department may require such engineer certifications as necessary to assure the adequacy of the design and construction of permitted projects.

(e) The department shall limit the construction of structures which interfere with public access along the beach. However, the department may require, as a condition to granting permits, the provision of alternative access when interference with public access along the beach is unavoidable. The width of such alternate access may not be required to exceed the width of the access that will be obstructed as a result of the permit being granted.

(f) The department may, as a condition to the granting of a permit under this section, require mitigation, financial, or other assurances acceptable to the department as may be necessary to assure performance of conditions of a permit or enter into contractual agreements to best assure compliance with any permit conditions. The department may also require notice of the permit conditions required and the contractual agreements entered into pursuant to the provisions of this subsection to be filed in the public records of the county in which the permitted activity is located.

(6)(a) As used in this subsection:

1. "Frontal dune" means the first natural or manmade mound or bluff of sand which is located landward of the beach and which has sufficient vegetation, height, continuity, and configuration to offer protective value.
2. "Seasonal high-water line" means the line formed by the intersection of the rising shore and the elevation of 150 percent of the local mean tidal range above local mean high water.

(b) After October 1, 1985, and notwithstanding any other provision of this part, the department, or a local government to which the department has delegated permitting authority pursuant to subsections (4) and (16), shall not issue any permit for any structure, other than a coastal or shore protection structure, minor structure, or pier, meeting the requirements of this part, or other than intake and discharge structures for a facility sited pursuant to part II of chapter 403, which is proposed for a location which, based on the department's projections of erosion in the area, will be seaward of the seasonal high-water line within 30 years after the date of application for such permit. The procedures for determining such erosion shall be established by rule. In determining the area which will be seaward of the seasonal high-water line in 30 years, the department shall not include any areas landward of a coastal construction control line.

(c) Where the application of paragraph (b) would preclude the construction of a structure, the department may issue a permit for a single-family dwelling for the parcel so long as:

1. The parcel for which the single-family dwelling is proposed was platted or subdivided by metes and bounds before the effective date of this section;
2. The owner of the parcel for which the single-family dwelling is proposed does not own another parcel immediately adjacent to and landward of the parcel for which the dwelling is proposed;
3. The proposed single-family dwelling is located landward of the frontal dune structure; and

4. The proposed single-family dwelling will be as far landward on its parcel as is practicable without being located seaward of or on the frontal dune.

(d) In determining the land areas which will be below the seasonal high-water line within 30 years after the permit application date, the department shall consider the impact on the erosion rates of an existing beach nourishment or restoration project or of a beach nourishment or restoration project for which all funding arrangements have been made and all permits have been issued at the time the application is submitted. The department shall consider each year there is sand seaward of the erosion control line that no erosion took place that year. However, the seaward extent of the beach nourishment or restoration project beyond the erosion control line shall not be considered in determining the applicable erosion rates. Nothing in this subsection shall prohibit the department from requiring structures to meet criteria established in subsection (1), subsection (2), or subsection (5) or to be further landward than required by this subsection based on the criteria established in subsection (1), subsection (2), or subsection (5).

(e) The department shall annually report to the Legislature the status of this program, including any changes to the previously adopted procedures for determining erosion projections.

(7) Any coastal structure erected, or excavation created, in violation of the provisions of this section is hereby declared to be a public nuisance; and such structure shall be forthwith removed or such excavation shall be forthwith refilled after written notice by the department directing such removal or filling. In the event the structure is not removed or the excavation refilled within a reasonable time as directed, the department may remove such structure or fill such excavation at its own expense; and the costs thereof shall become a lien upon the property of the upland owner upon which such unauthorized structure or excavation is located.

(8) Any person, firm, corporation, or agent thereof who violates this section is guilty of a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#); except that a person driving any vehicle on, over, or across any sand dune and damaging or causing to be damaged such sand dune or the vegetation growing thereon in violation of this section is guilty of a misdemeanor of the second degree, punishable as provided in s. [775.082](#) or s. [775.083](#). A person, firm, corporation, or agent thereof shall be deemed guilty of a separate offense for each day during any portion of which any violation of this section is committed or continued.

(9) The provisions of this section do not apply to structures intended for shore protection purposes which are regulated by s. [161.041](#) or to structures existing or under construction prior to the establishment of the coastal construction control line as provided herein, provided such structures may not be materially altered except as provided in subsection (5). Except for structures that have been materially altered, structures determined to be under construction at the time of the establishment or reestablishment of the coastal construction control line shall be exempt from the provisions of this section. However, unless such an exemption has been judicially confirmed to exist prior to April 10, 1992, the exemption shall last only for a period of 3 years from either the date of the determination of the exemption or April 10, 1992, whichever occurs later. The department may extend the exemption period for structures that require longer periods for completion of their construction, provided that construction during the initial exemption period has been continuous. For purposes of this subsection, "continuous" means following a reasonable sequence of construction without significant or unreasonable periods of work stoppage.

(10) The department may by regulation exempt specifically described portions of the coastline from the provisions of this section when in its judgment such portions of coastline because of their nature are not subject to erosion of a substantially damaging effect to the public.

(11) Pending the establishment of coastal construction control lines as provided herein, the provisions of s. [161.052](#) shall remain in force. However, upon the establishment of coastal construction control lines, or the establishment of coastal construction zoning and building codes as provided in subsection (4), the provisions of s. [161.052](#) shall be superseded by the provisions of this section.

(12)(a) The coastal construction control requirements defined in subsection (1) and the requirements of the erosion projections pursuant to subsection (6) do not apply to any modification, maintenance, or repair to any existing structure within the limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure. Specifically excluded from this exemption are seawalls or other rigid coastal or shore protection structures and any additions or enclosures added, constructed, or installed below the first dwelling floor or lowest deck of the existing structure.

(b) Activities seaward of the coastal construction control line which are determined by the department not to cause a measurable interference with the natural functioning of the coastal system are exempt from the requirements in subsection (5).

(c) The department may establish exemptions from the requirements of this section for minor activities determined by the department not to have adverse impacts on the coastal system. Examples of such activities include, but are not limited to:

1. Boat moorings;
2. Maintenance of existing beach/dune vegetation;
3. The burial of seaweed, dead fish, whales, or other marine animals on the unvegetated beach;
4. The removal of piers or other derelict structures from the unvegetated beach or seaward of mean high water;
5. Temporary emergency vehicular access, provided any impacted area is immediately restored;
6. The removal of any existing structures or debris from the upland, provided there is no excavation or disturbance to the existing topography or beach/dune vegetation;
7. Construction of any new roof overhang extending no more than 4 feet beyond the confines of the existing foundation during modification, renovation, or reconstruction of a habitable structure within the confines of the existing foundation of that structure which does not include any additions to or modification of the existing foundation of that structure;
8. Minor and temporary excavation for the purpose of repairs to existing subgrade residential service utilities (e.g., water and sewer lines, septic tanks and drainfields, electrical and telephone cables, and gas lines), provided that there is minimal disturbance and that grade is restored with fill compatible in both coloration and grain size to the onsite material and any damaged or destroyed vegetation is restored using similar vegetation; and
9. Any other minor construction with impacts similar to the above activities.

(13)(a) Notwithstanding the coastal construction control requirements defined in subsection (1) or the erosion projection determined pursuant to subsection (6), the department may, at its discretion, issue a permit for the repair or rebuilding within the confines of the original foundation of a major structure pursuant to the provisions of subsection (5). Alternatively, the department may also, at its discretion, issue a permit for a more landward relocation or rebuilding of a damaged or existing structure if such relocation or rebuilding would not cause further harm to the beach-dune system, and if, in the case of rebuilding, such rebuilding complies with the provisions of subsection (5), and otherwise complies with the provisions of this subsection.

(b) Under no circumstances shall the department permit such repairs or rebuilding that expand the capacity of the original structure seaward of the 30-year erosion projection established pursuant to

subsection (6).

(c) In reviewing applications for relocation or rebuilding, the department shall specifically consider changes in shoreline conditions, the availability of other relocation or rebuilding options, and the design adequacy of the project sought to be rebuilt.

(d) Permits issued under this subsection shall not be considered precedential as to the issuance of subsequent permits.

(14) Concurrent with the establishment of a coastal construction control line and the ongoing administration of this chapter, the secretary of the department shall make recommendations to the Board of Trustees of the Internal Improvement Trust Fund concerning the purchase of the fee or any lesser interest in any lands seaward of the control line pursuant to the state's Save Our Coast, Conservation and Recreation Lands, or Outdoor Recreation Land acquisition programs; and, with respect to those control lines established pursuant to this section prior to June 14, 1978, the secretary may make such recommendations.

(15) A coastal county or municipality fronting on the Gulf of Mexico, the Atlantic Ocean, or the Straits of Florida shall advise the department within 5 days after receipt of any permit application for construction or other activities proposed to be located seaward of the line established by the department pursuant to the provisions of this section. Within 5 days after receipt of such application, the county or municipality shall notify the applicant of the requirements for state permits.

(16) In keeping with the intent of subsection (4), and at the discretion of the department, authority for permitting certain types of activities which have been defined by the department may be delegated by the department to a coastal county or coastal municipality. Such partial delegation shall be narrowly construed to those particular activities specifically named in the delegation and agreed to by the affected county or municipality, and the delegation may be revoked by the department at any time if it is determined that the delegation is improperly or inadequately administered.

(17) The department may, at the request of a property owner, contract with such property owner for an agreement, or modify an existing contractual agreement regulating development activities landward of a coastal construction control line, provided that nothing within the contractual agreement shall be inconsistent with the design and siting provisions of this section. In no case shall the contractual agreement bind either party for a period longer than 5 years from its date of execution. Prior to beginning any construction activity covered by the agreement, the property owner shall obtain the necessary authorization required by the agreement. The agreement shall not authorize construction for:

(a) Major habitable structures which would require construction beyond the expiration of the agreement, unless such construction is above the completed foundation; or

(b) Nonhabitable major structures or minor structures, unless such construction was authorized at the same time as the habitable major structure.

(18) The department is authorized to grant areawide permits to local governments, other governmental agencies, and utility companies for special classes of activities in areas under their general jurisdiction or responsibility, so long as these activities, due to the type, size, or temporary nature of the activity, will not cause measurable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites. Such activities shall include, but not be limited to: road repairs, not including new construction; utility repairs and replacements, or other minor activities necessary to provide utility services; beach cleaning; and emergency response. The department may adopt rules to establish criteria and guidelines for use by permit applicants. The department shall require notice provisions appropriate to the type

and nature of the activities for which areawide permits are sought.

(19) The department is authorized to grant general permits for projects, including dune walkovers, decks, fences, landscaping, sidewalks, driveways, pool resurfacing, minor pool repairs, and other nonhabitable structures, so long as these projects, due to the type, size, or temporary nature of the project, will not cause a measurable interference with the natural functioning of the beach dune system or with marine turtles or their nesting sites. In no event shall multifamily habitable structures qualify for general permits. However, single-family habitable structures which do not advance the line of existing construction and satisfy all siting and design requirements of this section may be eligible for a general permit pursuant to this subsection. The department may adopt rules to establish criteria and guidelines for use by permit applicants.

(a) Persons wishing to use the general permits set forth in this subsection shall, at least 30 days before beginning any work, notify the department in writing on forms adopted by the department. The notice shall include a description of the proposed project and supporting documents depicting the proposed project, its location, and other pertinent information as required by rule, to demonstrate that the proposed project qualifies for the requested general permit. Persons who undertake projects without proof of notice to the department, but whose projects would otherwise qualify for general permits, shall be considered as being undertaken without a permit and shall be subject to enforcement pursuant to s. [161.121](#).

(b) Persons wishing to use a general permit must provide notice as required by the applicable local building code where the project will be located. If a building code requires no notice, any person wishing to use a general permit must, at a minimum, post on the property at least 5 days prior to the commencement of construction a sign no smaller than 88 square inches, with letters no smaller than one-quarter inch, describing the project.

(20)(a) The department may suspend or revoke the use of a general or areawide permit for good cause, including: submission of false or inaccurate information in the notification for use of a general or areawide permit; violation of law, department orders, or rules relating to permit conditions; deviation from the specified activity or project indicated or the conditions for undertaking the activity or project; refusal of lawful inspection; or any other act on the permittee's part in using the general or areawide permit which results or may result in harm or injury to human health or welfare, or which causes harm or injury to animal, plant, or aquatic life or to property.

(b) The department shall have access to the permitted activity or project at reasonable times to inspect and determine compliance with the permit and department rules.

(21) The department is authorized to adopt rules related to the following provisions of this section: establishment of coastal construction control lines; activities seaward of the coastal construction control line; exemptions; property owner agreements; delegation of the program; permitting programs; and violations and penalties.

(22) In accordance with ss. [553.73](#) and [553.79](#), and upon the effective date of the Florida Building Code, the provisions of this section which pertain to and govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities shall be incorporated into the Florida Building Code. The Florida Building Commission shall have the authority to adopt rules pursuant to ss. [120.536](#) and [120.54](#) in order to implement those provisions. This subsection does not limit or abrogate the right and authority of the department to require permits or to adopt and enforce environmental standards, including but not limited to, standards for ensuring the protection of the beach-dune system, proposed or existing structures, adjacent properties, marine turtles, native salt-resistant vegetation, endangered plant communities, and the preservation of public beach access.

History.--s. 1, ch. 71-280; s. 2, ch. 75-87; s. 1, ch. 77-12; s. 5, ch. 78-257; s. 29, ch. 79-164; s. 3, ch. 80-183; s. 67, ch. 81-259; s. 2, ch. 83-247; s. 33, ch. 85-55; s. 1, ch. 86-191; s. 13, ch. 87-97; s. 1, ch. 88-106; s. 1, ch. 88-349; s. 11, ch. 89-175; s. 9, ch. 91-224; s. 1, ch. 92-191; s. 22, ch. 94-

356; s. 1437, ch. 95-147; s. 1, ch. 96-371; s. 21, ch. 96-410; s. 2, ch. 98-131; s. 6, ch. 2000-141; s. 5, ch. 2000-346; s. 34, ch. 2001-186; s. 3, ch. 2001-372.

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