

# Florida Coastal Construction Permitting and Sovereign Submerged Lease Issues

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# The State of Florida Protects its Beach and Dune System



**Fla. Stat. § 161.053 (2011)**

Coastal construction activities are regulated by the State to prevent “imprudent construction” to protect:

- People who live there
- Endangered species
- Tourism
- Public Access

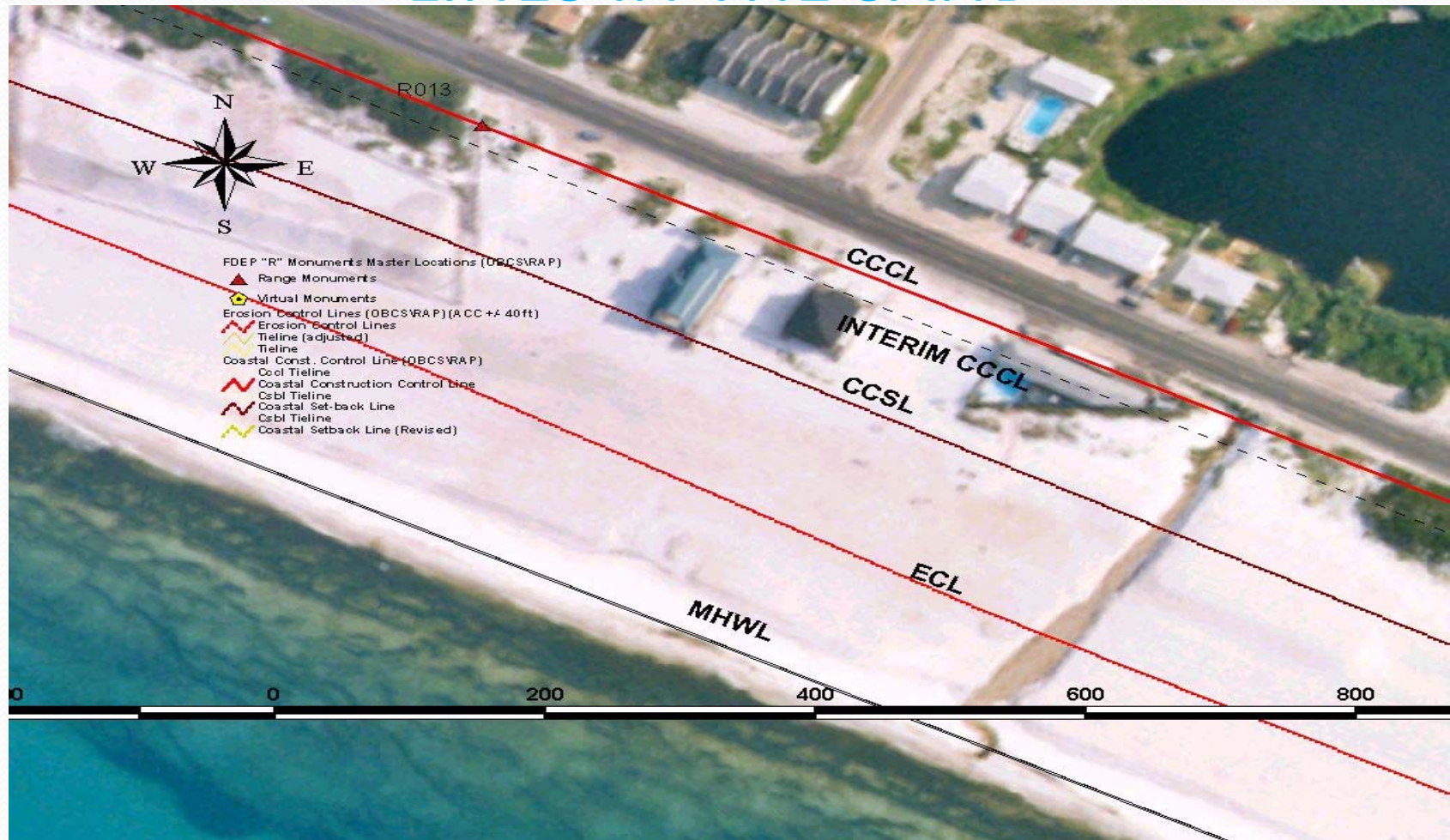


# Coastal Permitting is “Regulation” – Not “Prohibition”!





# LINES IN THE SAND





# LINES IN THE SAND

- **Mean High Water Line (MHWL) and 50-Foot Setback**
- **Erosion Control Lune**
- **Thirty-Year Erosion Projection Line**
- **Coastal Construction Control Line (CCCL)**
- **Line of Construction**





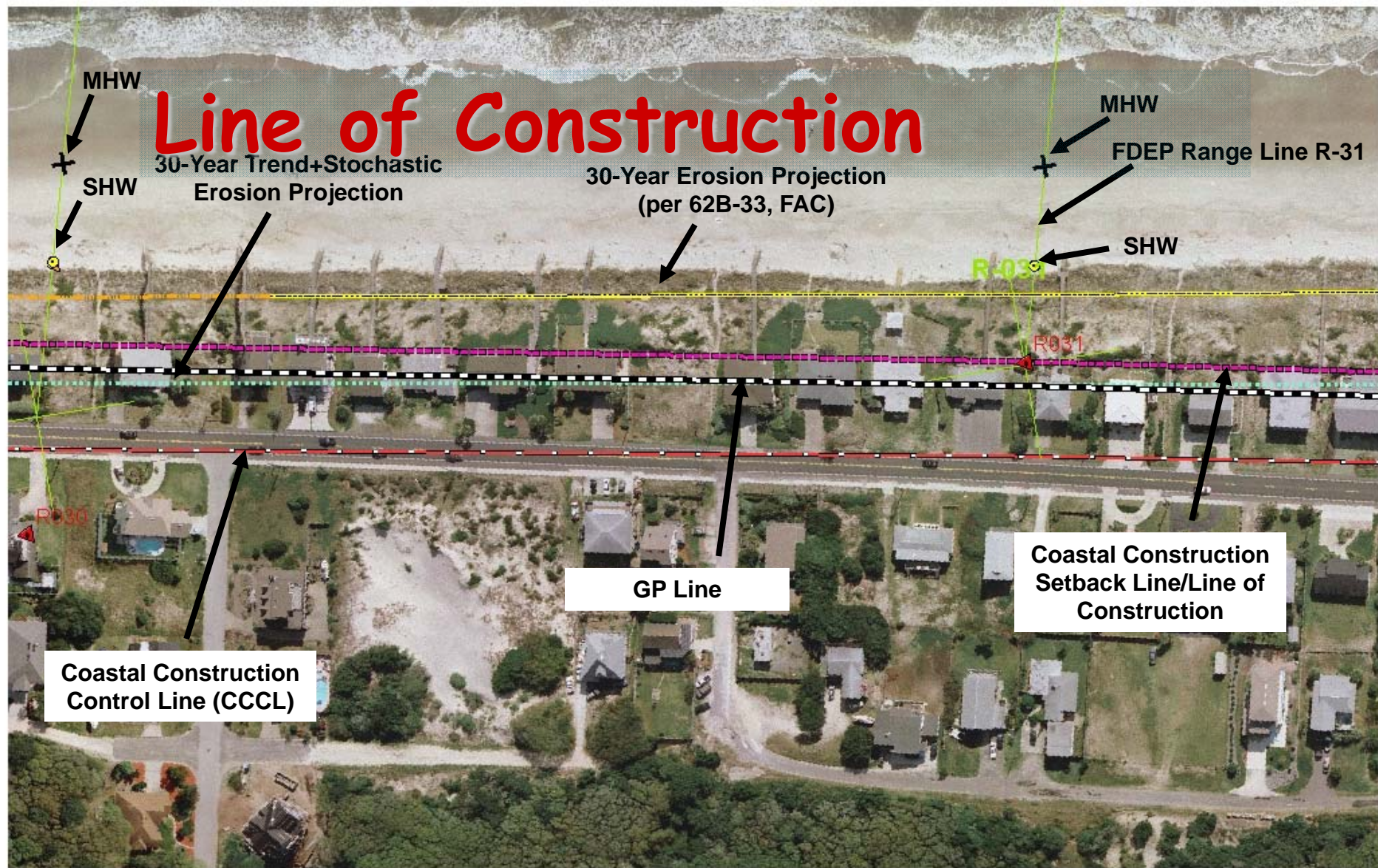
# Can One Build or Rebuild Seaward of the CCCL? YES

Construction Activities are NOT prohibited seaward of the CCCL.

However, “...(s)pecial 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.”

(Fla. Stat. § 161.053(1)(a) (2011))





Nassau County (R-30 to R-32)

**General Permit (GP) Evaluation Schematic**







# Potential Permitting Issues

- Beach and Dune System Impacts (siting, excavation and vegetation removal)
- 30-year erosion projection of seasonal high water line (line of prohibition for major structures)
- Impact to adjacent Properties
- Marine turtles
- Public Beach Access
- Line of Construction

# What are Sovereign Submerged Lands?

Tidelands and all lands beneath navigable waters, the title to which has not been validly transferred;

All beaches between mean high water and mean low water lines;

Islands within navigable waters;

Lands beneath the ordinary high water marks of lakes and rivers;

Florida's sovereign lands extend from the coastline or the historic coastline, whichever is more landward, three geographic miles into the Atlantic Ocean and three marine leagues (approximately nine miles) into the Gulf of Mexico.





## Where Are Sovereign Submerged Lands Located?

*"... under navigable waters within the boundaries of the state which have not been alienated, including beaches below mean high water lines ..."*

Navigable waters are those water bodies which were "navigable in fact" on the date of Florida's statehood.





## How Were Sovereign Submerged Lands Created?

Ownership of submerged land ownership beneath navigable waters passed from Spain to the United States under the Treaty of Cession on February 22, 1819.

Courts recognize the prima facie validity of Spanish land grants, but they are interpreted in accordance with Spanish civil law as it existed prior to the Treaty of Cession.

Grants of submerged lands by Spanish officials not authorized under Spanish law are not recognized.



# Overview of Leases (proprietary review)

- Cannot be contrary to the public interest.
- Restrictions as deemed necessary to protect and manage sovereignty lands.
- Leases that generate profits for the user require equitable compensation (limited exceptions).
- Need an appraisal from Division's Bureau of Appraisal (unless an exception applies).
- Activities on sovereignty lands are limited to water dependent uses unless it is in the public interest to allow an exception.



# Overview of Leases (proprietary review)

- No split houses, boathouses with living quarters, or other residential structures on sovereignty lands.
- State Land Management Plan must be considered.
- No use of sovereignty lands to provide road access to islands (unless exception made by Trustees).
- Use of sovereign submerged lands adjacent to undeveloped coastal islands is severely limited.
- Existing licenses to use sovereignty lands must be converted to leases.



# FDEP Analysis Prior to Granting a Proprietary Interest

- General policies.
- Evaluated on a case-by-case basis, weighing any factors relevant under Chapters 253 and 258, Fla. Stat.
- The Trustees reserve the right to approve, modify, or reject any proposal.
- No sale, lease, or transfer of sovereignty lands is permitted unless it is deemed to be in the public interest.
- Public interest assessment criteria are set out in Fla. Admin. Code Rule 18-20.004(2).
- New construction of seawalls and deposition of fill waterward of the mean or ordinary high water line is prohibited.
- Public road and bridge projects may be approved if no reasonable alternative exists.
- Dredging waterward of the mean or ordinary high water line, for the sole purpose of providing upland fill, is prohibited.



# Leases are not required if owner has Riparian Rights

- Applications for activities on sovereignty lands, riparian to uplands, may be made by riparian owners, with satisfactory evidence of sufficient upland title interest.
- Structures or other activities must be within the riparian rights area of the applicant.
- Must be designed so as not to restrict or infringe upon the rights of adjacent upland riparian owners.



# Cost of Leases

- The standard annual lease fee for wet slip marina docks is computed at a rate of 6% of the annual income from the use of sovereignty submerged land, or a base fee, whichever is greater.
- The annual income is defined as the gross revenue derived directly or indirectly from the use of sovereignty submerged lands.
- The income used to determine annual lease fees, and other information required to determine the lease fee, must be certified by the lessee.
- New facilities will be charged the base fee upon approval of the lease.



# Cost of Leases

- As of March 1, 2012, the annual base fee was computed at a rate of \$.160194 per square foot.
- A 30% discount is provided for all marinas having 90% of the slips open to the public on a first come, first serve basis.
- An additional one-time surcharge equal to 25% of the base fee is charged for the first annual fee on all leases, and for lease expansions for that portion of the expansion area.
- The minimum annual fee for a lease is \$480.58 and is adjusted annually.
- The Trustees may waive payment of lease fees for government, research, educational, or charitable organizations if certain conditions are met.
- If a grandfathered facility loses its grandfathered status, the lease fee and rate schedule for the preempted area will be the appropriate lease fee or base rate at the time the lease is approved.

# Public Interest Factors

- Transfers of interests in sovereignty land are subject to a specific benefit/cost balancing test to determine whether the social, economic, and/or environmental benefits clearly exceed the costs imposed on the public by the transfer.
- Public benefits include access, provision of boating and marina services, improvement of public health, safety, or welfare, improved land management, improved water quality, enhancement and restoration of natural habitat and functions, and improved protection of endangered, threatened, or unique species.
- A listing of specific activities presumed to be beneficial are provided in the Rule. Fla. Admin. Code Rule 18-20.004(b)-(d).



# Public Benefits Balancing Act

- Benefits are balanced against negative impacts such as reduced water quality, degraded or destroyed natural habitat, destruction, harm, or harassment of endangered or threatened species and their habitat, preemption of public use, increased navigation hazards, reduced aesthetics, and adverse cumulative impacts.



# Case Studies and Examples

# Case Study



**1153 N. Rio Vista  
Blvd.**



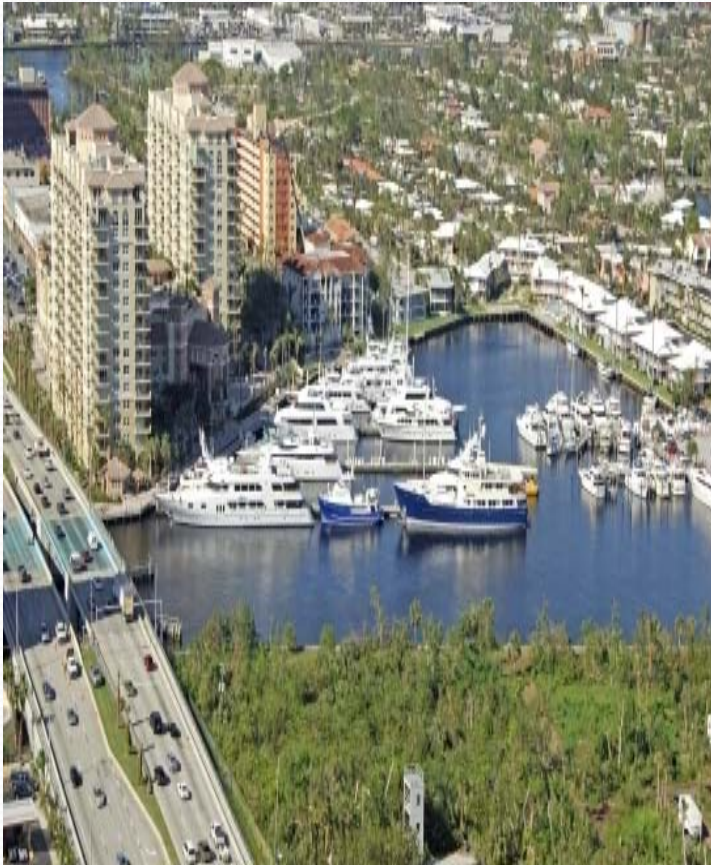
# Case Study



## Daytona Beach Marina



# Case Study



## **Sunrise Harbor**



# THANK YOU QUESTIONS?

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