



TOWN OF HIGHLAND BEACH AGENDA MEMORANDUM

MEETING TYPE: Commission Meeting

MEETING DATE *05/12/2026*

SUBMITTED BY: Jeff Remas, CBO, Building Department

SUBJECT: Article V, Chapter 6, Code of Ordinances: Seawall and Oceanfront Development Standards

SUMMARY:

Article V of Chapter 6 of the Town Code governs seawalls, bulkheads, and retaining walls on properties east of State Road A1A. The Town Attorney has confirmed that the development standards contained in Section 6-127(d) apply to all construction east of A1A, not only to seawall projects. Among those standards, Section 6-127(d) prohibits any disturbance of the natural ocean ridge within 120 feet of the easterly survey line or vegetation line, whichever lies furthest west, in a manner that would lower any east-to-west profile below +18 feet NAVD. When a property owner proposes to build within that 120-foot zone and must excavate below +18 feet NAVD, the ordinance requires that a permitted seawall be constructed first as a condition of that work. The ordinance also contains an absolute prohibition on any part of a structure extending east of the Coastal Construction Control Line (CCCL).

The CCCL was first established for Palm Beach County in 1978 and was re-established by FDEP in 1997. The Town's ordinance has never been amended to reflect the re-established CCCL position. In a number of instances in Highland Beach, the current CCCL falls significantly further west than it did when the ordinance was written. On certain oceanfront lots, the CCCL now falls at or near the western property line. In the most severe cases, it falls within the public right-of-way west of the parcel entirely. Some of the problems identified are:

- Where the current CCCL falls at, or west of a property line, the Town's ordinance renders the lot unbuildable. This is true even when FDEP has issued a valid CCCL construction permit authorizing the project, because FDEP approval does not satisfy the Town's absolute prohibition against construction east of the CCCL.
- Where a property owner must build within the 120-foot ocean ridge protection zone and excavate below +18 feet NAVD, the ordinance requires a seawall permit as a prerequisite. However, FDEP's current policy under Chapter 62B-33, Florida Administrative Code, prohibits new ocean ridge seawalls unless an existing structure faces imminent structural failure. A property owner who holds a valid FDEP CCCL building permit cannot obtain the seawall permit the Town requires, making local approval impossible despite state authorization.
- The Building Department has discussed both issues directly with FDEP District staff and with a qualified coastal engineer the Town has retained on prior projects. Both have confirmed that the

conflicts are real and that the Town's ordinance is inconsistent with FDEP's current CCCL positions and permitting standards. Permit applicants have already been affected.

Enforcing an ordinance that renders privately owned lots unbuildable after FDEP has issued construction approval creates regulatory taking exposure. Under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), a regulation that strips a property owner of all economically beneficial use of their land constitutes a taking requiring just compensation under the Fifth Amendment. Under Florida's Bert J. Harris, Jr. Private Property Rights Protection Act, F.S. § 70.001, a lower threshold applies. The Act is triggered when a government action inordinately burdens a property owner's use of their land, and a prevailing owner is entitled to attorney's fees and costs. Upon receipt of a written Harris Act claim, the Town has 180 days to respond with a settlement offer. The Town currently has no administrative relief mechanism to offer an affected owner. *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001), forecloses the argument that owners who purchased after the ordinance was enacted assumed the regulatory risk and therefore lack standing to bring a claim.

Florida Senate Bill 180, signed into law in June 2025, prohibits all local governments in Palm Beach County from adopting land development regulations more restrictive or burdensome than those in effect prior to August 1, 2024. This prohibition runs through October 1, 2027. The proposed amendment is directed at making the Town's ordinance less restrictive, not more, and is therefore consistent with SB 180. Town Counsel will review the final draft to ensure no new burdens are inadvertently introduced.

FISCAL IMPACT:

There is no direct fiscal impact associated with this request. The review will be conducted using existing staff resources and within the current scope of Town Counsel's engagement.

ATTACHMENTS:

Sampling of a map showing the CCCL west of the property line on oceanfront lots.

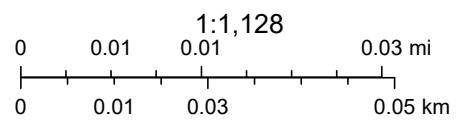
RECOMMENDATION:

The Building Department respectfully requests that the Commission authorize staff to work with Town Counsel to review Article V as applied to properties east of A1A and to develop proposed ordinance amendments for Planning Board review, public hearing, and return to the Commission for adoption. The goal is to resolve the conflict between the Town's current standards and FDEP's current CCCL positions and permitting policies while retaining meaningful protections for the ocean ridge and dune system. The longer the current ordinance remains unchanged, the greater the Town's legal exposure.

ArcGIS Web Map



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- CCCL
- Highland Beach Boundary
- Highland Beach Address Points
- Highland Beach Parcels
- Streets

State of Florida, Microsoft, Vantor