## Chapter 33F KEY BISCAYNE BEACH PRESERVATION [[1]](#BK_28C8778A3AF0DB9D6F7E650C0074D992)

[Sec. 33F-1. Key Biscayne Barrier Island Beach Preservation and Coastal Construction Regulations.](#BK_12E5EDE296D34B99B98720E6A21C8B70)

[Sec. 33F-2. Penalties.](#BK_FB13AAC36E08E89BAB4B66B4A3A5960F)

Sec. 33F-1. Key Biscayne Barrier Island Beach Preservation and Coastal Construction Regulations.

(a) *Purpose and intent.* It is the purpose and intent of the Key Biscayne Barrier Island Beach Preservation and Coastal Construction Regulations to provide standards for development along the coastal region of the barrier island of Key Biscayne that will properly reflect the unique conditions of said barrier island, to protect environmentally sensitive resources, to maintain and protect existing or reestablished natural ecosystems and related coastal components of the barrier island and Atlantic Ocean, and to maintain or enhance the contribution of such natural resources to the quality of life and economic well-being of Key Biscayne in Dade County.

(b) *Applicability.* The Key Biscayne Barrier Island Beach Preservation and Coastal Construction Control Regulations shall apply to those portions of Key Biscayne seaward of the State Coastal Construction Control Line ("SCCCL"), established and recorded for Key Biscayne on February 19, 1982, pursuant to the provisions of Section 161.053, Florida Statutes.

(c) *Implementation.* After April 14, 1989, all development seaward of the State Coastal Construction Control Line shall be consistent with the requirements of this chapter. For purposes of this chapter, the term "development" shall mean the carrying out of any building or excavation activity, or the making of any material change in the use or appearance of any structure or land, including, but not limited to, construction of buildings or other structures, mining, dredging, clearing, filling, grading, paving, excavation and drilling operations.

(d) *Coastal construction and excavation setback requirements.*

(1) *Definitions.* For purposes of this chapter, the terms "habitable major structures," "nonhabitable major structures," and "minor structures" shall have the same meaning as those terms are defined in subsections 16B-33.002(54)(a), (b) and (c), F.A.C., respectively.

(2) *New structures.* Subject to the variance procedures contained herein, no construction or excavation for habitable major structures, except restaurants, shall be permitted seaward of the State Coastal Construction Control Line (SCCCL).

Construction or excavation for nonhabitable major structures, minor structures and restaurants seaward of the SCCCL to the Erosion Control Line (ECL) (as determined in accordance with the provisions of Sections 161.141—161.211, Florida Statutes, in connection with the 1987 Key Biscayne Restoration Project) may be permitted subject to:

a. When applicable, the granting of a subsequent Coastal Construction Control Line permit by the State of Florida Department of Natural Resources.

b. At least fifty (50) percent of the permitted area shall be free of any development. For purposes of this subsection only, the term "development" shall not include excavation or filling to meet applicable flood criteria, pedestrian or cart paths, landscaping and landscaped berms, benches and pedestrian viewing areas, boardwalks or beach access facilities, existing seawalls or other existing shore protection structures.

c. No individual nonhabitable major structure, minor structure or restaurant shall be permitted to exceed fifteen (15) percent of the permitted area. For purposes of this subsection only, the term "structure" shall not include pools, lagoons, pool slides, decking, boardwalks, pedestrian and cart paths, benches and viewing structures.

d. The height of any nonhabitable major structure, minor structure or restaurant shall be limited to a single story not to exceed twenty (20) feet above either (i) the federal base flood elevation recommended by the Federal Emergency Management Agency or the National Oceanic and Atmospheric Administration, or (ii) the design breaking wave crests or wave uprush superimposition established by the State of Florida Department of Natural Resources for said structure pursuant to Rule 16B-33.007(4)(c), F.A.C., whichever is the greater when measured to the highest point of any interior wall.

(3) *Existing structures.* Repairs and restoration of any structure that is seaward of the SCCCL may be permitted by the Department, subject to the following minimum requirements:

a. Plans for restoration of existing structures shall include copies of the original plans of the building to be restored, which shall be sealed and certified by an architect licensed in the State of Florida.

b. No restoration or repairs of an existing structure may exceed the limits of the existing foundation or height, except as may be necessary to repair or enhance the efficiency of an existing seawall.

c. Whenever an existing structure is destroyed by an act of God or is required to be demolished as an unsafe structure, a replacement structure may be permitted under this chapter, so long as the replacement structure does not exceed the foundation and height dimensions of the destroyed or demolished structure and otherwise complies with the requirements of all applicable building codes. In no event, however, may the replacement structure be located seaward of the foundation of the structure to be replaced.

d. When applicable, the granting of a permit under this subsection shall be subject to the granting of a subsequent Coastal Construction Control Line permit by the State of Florida Department of Natural Resources.

(4) *Variances.* The Dade County Zoning Appeals Board or the Board of County Commissioners, whichever has jurisdiction, may authorize a variance from the provisions of this chapter pursuant to [Section 33-311](../level3/PTIIICOOR_CH33ZO_ARTXXXVIZOPR.docx#PTIIICOOR_CH33ZO_ARTXXXVIZOPR_S33-311COZOAPBOUTDU), Code of Metropolitan Dade County, Florida. No variance shall be granted unless the Zoning Appeals Board or the Board of County Commissioners finds, among the other criteria set forth in [Section 33-311](../level3/PTIIICOOR_CH33ZO_ARTXXXVIZOPR.docx#PTIIICOOR_CH33ZO_ARTXXXVIZOPR_S33-311COZOAPBOUTDU), that the following conditions exist in regard to the land concerned:

a. That there are special circumstances or conditions affecting the property and that the strict application of the provisions of this chapter would deprive the applicant of the reasonable use of his land; and

b. That the variance is necessary for the preservation and enjoyment of a substantial property right of the applicant; and

c. That the granting of the variance will not be detrimental to the public welfare or injurious to the other property in the area in which the property is situated; and

d. When applicable, the granting of a variance under this subsection shall be subject to the subsequent granting of a Coastal Construction Control Line permit by the State of Florida Department of Natural Resources.

(5) *Exhaustion of administrative remedies.* Nothing in this chapter shall be construed or applied to constitute a temporary or permanent taking of private property without just compensation or the abrogation of vested rights. Any property owner alleging that this chapter, as applied, constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights must affirmatively demonstrate the legal requisites of the claim by exhausting the administrative remedy provided in [Section 2-114.1](../level3/PTIIICOOR_CH2AD_ARTXVDEPLDERE.docx#PTIIICOOR_CH2AD_ARTXVDEPLDERE_S2-114.1ADRETAVERICL), Code of Metropolitan Dade County, Florida. The procedures set forth in [Section 2-114.1](../level3/PTIIICOOR_CH2AD_ARTXVDEPLDERE.docx#PTIIICOOR_CH2AD_ARTXVDEPLDERE_S2-114.1ADRETAVERICL) for the review of claim pertaining to the application of the Comprehensive Development Master Plan shall constitute the procedures for the review of claims regarding the application of this chapter. Notwithstanding any contrary provisions of the Code of Metropolitan Dade County, no property owner claiming that this chapter as applied constitutes or would constitute a temporary or permanent taking of private property or an abrogation of vested rights may pursue such claim in court or before a quasi-judicial body unless he has first exhausted the administrative remedies provided herein.

(Ord. No. 89-23, § 2, 4-4-89)

Sec. 33F-2. Penalties.

Each violation of this chapter is a violation pursuant to Section 125.69, Florida Statutes, and is punishable under said section by imprisonment for up to sixty (60) days or a fine of up to five hundred dollars ($500.00), or both such imprisonment and fine. Each week during any portion of which a violation exists shall constitute a separate offense. The penalties provided herein shall not be construed as the exclusive remedy for violations of this chapter. All judicial remedies provided by the Code of Metropolitan Dade County shall be available to remedy violations of this chapter.

(Ord. No. 89-23, § 2, 4-4-89)

FOOTNOTE(S):

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**Cross reference—** Boats, docks and waterways, Ch. 7; Biscayne Bay Environmental Enhancement Trust Fund, § 7-5.1; environmental protection, Ch. 24; environmentally endangered lands program, Ch. 24A; areas of critical environmental concern, Ch. 33B; Biscayne Bay management, Ch. 33D. [(Back)](#BK_F6E9E64D56E40307FAC3DC9AF6F146CD)