



Gerald D. Reid
Commissioner

Department of
Environmental Protection
State of Maine

MEMORANDUM

TO: Mark Draper, Board Chair of the Board of Environmental Protection,
Kate Tierney, Assistant Attorney General

FROM: Gerry Reid, Commissioner,
Mark Stebbins, Bureau of Land Resources, Central Maine Regional Office

SUBJECT: ADMINISTRATIVE CONSENT AGREEMENT, TOWN OF YORK

DATE: November 21, 2019

Statute and Rule Reference: By constructing, repairing, and altering a permanent structure in a coastal sand dune system, as defined by the *Natural Resources Protection Act* (NRPA) 38 M.R.S. § 480-B(8) and the *Coastal Sand Dune Rules* 06-096 C.M.R. ch. 355, § 3(U), without first obtaining a permit from the Department, the Town of York violated the *Natural Resources Protection Act*, 38 M.R.S. § 480-C.

Location: The Town of York owns a seawall located within a right-of-way of Long Beach Avenue in York, Maine.

Violator: Town of York

Description: On April 3, 2018, Department staff visited the site with the Town’s representatives. At that time, Department staff documented that the Town’s contractor was excavating part of the beach in front of the sloped seawall to replace the seawall footer, which had been washed out in a recent storm. The Town’s representatives described a longer-term plan to change the surface of the seawall to step or roughen the surface, which was intended to reduce wave run-up. Department staff requested that the Town submit the plans for the seawall changes in order to make a determination whether the activity would be exempt from Department review under the NRPA.

Plans were submitted to the Department and after reviewing the plans, Department staff informed the Town that the stepped design was a change in configuration of the existing structure and would require a NRPA permit. The applicant continued to build the steps on top of the existing seawall in the weeks after being notified that these changes to the seawall required prior approval from the Department. Approximately 1,823 linear feet of the previously existing



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seawall had been altered. The Town had not obtained any permits from the Department for this activity prior to its initiation or completion.

Environmental Issues: The alteration of an existing permanent structure and placement of fill within the coastal sand dune system can result in the increased erosion on beaches, dune loss, beach changes, and movement of the shoreline over time. Department standards for the new and expansion of existing structures within the coastal environment strike a delicate balance between protecting shorefront property and the coastal sand dune system.

The Town of York submitted an after-the-fact NRPA permit application, which was accepted for processing by the Department on August 24, 2018 and approved on October 10, 2019. The permit includes a requirement for a beach monitoring and beach nourishment program if the comparison of sand volumes show there is a net loss of sand compared to the baseline.

Staff Recommendation: The Department recommends acceptance of this Administrative Consent Agreement as proposed with a monetary penalty of seventy-five thousand dollars (\$75,000.00) and the requirement that the Town of York install an educational kiosk that describes the importance of coastal sand dunes in mitigating and limiting coastal erosion and the ecological benefits of maintaining native beach vegetation. This educational structure must be installed by June 1, 2020.

Is the agreement subject to 30-day public comment pursuant to 38 M.R.S. § 347-A(6)?

Yes No

POSTED FOR 30-DAY PUBLIC COMMENT:

Enforcement Coordinator: N/A Posting Date: N/A Expires: N/A

PROCEED WITH SIGNATURE:

Enforcement Coordinator: Date: