



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



GERALD D. REID
COMMISSIONER

IN THE MATTER OF:

| | | |
|---------------------------------|---|-------------------------------|
| TOWN OF YORK |) | ADMINISTRATIVE CONSENT |
| YORK, YORK COUNTY, MAINE |) | AGREEMENT |
| NRPA |) | (38 M.R.S. § 347-A) |
| EIS DOCKET #2018-061-L |) | |

This Agreement, by and among Town of York, the Maine Board of Environmental Protection (the "Board"), and the Maine Office of the Attorney General, is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S. § 347-A(1).

THE PARTIES AGREE AS FOLLOWS:

1. The Town of York owns a seawall located within the right-of-way of Long Beach Avenue as described on a set of plans titled "Existing Conditions Plan for the Area of Long Sand Beach, York, York County, Maine," prepared by Easterly Survey, Inc., and dated January 30, 2015.
2. The Town of York (the "Town") is a municipal corporation that is organized and exists under the laws of the State of Maine.
3. The property described in Paragraph 1 of this Agreement is within a coastal sand dune system as defined in the *Natural Resources Protection Act*, 38 M.R.S. § 480-B(8), and contains frontal dunes as defined in the *Coastal Sand Dune Rules*, 06-096 C.M.R. ch. 355, § 3(U).
4. Major storm events in Oct-Nov of 2017 and March of 2018 undermined the seawall with loss of some large granite blocks from the seawall, loss of portions of sidewalk, and undermining of the road. These events were recorded in the following FEMA declarations of damage: FEMA – 4354 – DR – ME (October 29 – November 1, 2017) and FEMA – 4367 – DR- ME (March 2-8, 2018).
5. 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 Natural Resources Protection Act

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

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(“NRPA”). No plans were submitted to the Department for review during the month of April 2018.

On May 1, 2018, Department staff inspected the seawall and documented that work had begun to change the surface of the seawall by adding a stepped surface over the existing sloped structure. Plans were submitted to the Department for review later that day. 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.

On May 16, 2018, Department staff re-inspected the Long Sands Beach seawall bordering Long Beach Avenue in York. Staff observed that construction activities had continued and several hundred feet of the existing sloped riprap and concrete seawall had been expanded vertically and replaced with large granite steps. The Town had not obtained any permits from the Department for this activity.

6. The violations described in Paragraph 5 of this Agreement affected a coastal sand dune system, which is a protected natural resource as defined by the *Natural Resources Protection Act*, 38 M.R.S. § 480-B(8).
7. By constructing, repairing, and altering a permanent structure in a coastal sand dune system without first obtaining a permit from the Department, the Town violated the *Natural Resources Protection Act*, 38 M.R.S. § 480-C.
8. On June 27, 2018, the Department issued a Notice of Violation to the Town for the activities described in Paragraphs 5, 6 and 7 of this Agreement, in accordance with 38 M.R.S. § 347-A(1)(B). The Town responded to the NOV by letter dated July 30, 2018.
9. Pursuant to the June 27, 2018, Notice of Violation issued by the Department, the Department requested that the Town perform the following corrective actions:
 - A. Submit an After-The-Fact Individual NRPA permit application acceptable for processing to the Department; or
 - B. In combination with the action referenced in Paragraph 9(A) of this Agreement, or as a separate action, submit a restoration plan to the Department to reduce the altered structure or portions of the altered structure back to the original dimensions before the activity began.
10. On August 20, 2018, the Town of York submitted an after-the-fact NRPA permit application, which was accepted for processing by the Department on August 24, 2018.

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11. Subsequent to the Department's issuance of the June 27, 2018 Notice of Violation, the Department sent an additional letter on February 11, 2019 informing the Town that permits are required and that no further work on the seawall should continue until such permits are acquired. The Town continued work on the construction of the unlicensed seawall. Approximately 1,823 linear feet of the previously existing seawall has been altered.
12. On March 5, 2019, the Assistant Attorney General representing the Department issued a letter informing counsel for the Town that permits are required and that no further work on the seawall should continue until such permits are acquired. That same day counsel for the Town notified the Department that the Town had stopped construction activities on the seawall.
13. The parties agree this Agreement constitutes a Notice of Violation pursuant to 38 M.R.S. § 347-A(1)(B) for any violations specifically cited in this Agreement but not previously described in a Notice of Violation.
14. This Agreement shall become effective only if it is accepted by the Board and approved by the Attorney General.
15. To resolve the violations referred to in Paragraphs 5, 6, 7, and 11 of this Agreement, the Town agrees:
 - A. To pay to the *Treasurer, State of Maine*, immediately upon signing this Agreement, a civil monetary penalty in the amount of seventy five thousand dollars (\$75,000.00); and
 - B. To install and maintain a permanent sign board or other type of educational kiosk that includes information, reviewed and approved by the Department, about the important role of coastal sand dune systems in mitigating sea level rise and storm surges, and the ecological benefits of maintaining native beach vegetation. This educational structure must be installed by June 1, 2020, in accordance with the Town's zoning requirements, in a location on or near the bath house such that it is clearly viewable by beach-going visitors and members of the general public; and
 - C. To cease all work on the seawall until permits are issued by the Department; and
 - D. That any variation from the approved plans, proposals and supporting documents requires further Department review and approval prior to implementation; and
 - E. That any variations from the approved plans, proposals and/or supporting documents without Department approval is subject to further enforcement action; and

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- F. To pay to the *Treasurer, State of Maine*, upon demand by the Department, a civil monetary penalty in the amount of One Hundred Dollars (\$100.00) per day per violation, of any of the terms of this Agreement, as determined by and at the sole discretion of the Department.
16. The Board and Office of the Attorney General grant a release of their causes of action against the Town for the specific violations listed in Paragraphs 5, 6, 7 and 11 of this Agreement on the express condition that the actions listed in Paragraph 15 of this Agreement are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until all requirements of this Agreement are satisfied.
17. Non-compliance with this Agreement voids the release set forth in Paragraph 16 of this Agreement and may lead to an enforcement action pursuant to 38 M.R.S. §§ 347-A(1)(A), 347-A(5), 348 or 349(2), as well as pursuit of other remedies.
18. Actions taken pursuant to this Agreement shall be completed in accordance with the requirements of all applicable local, state, and federal laws, rules, and orders including but not limited to licensing requirements.
19. The provisions of this Agreement shall apply to, and be binding on, the parties and their officers, agents, servants, employees, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Agreement.

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YORK, MAINE
NRPA
EIS #2018-061-L

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ADMINISTRATIVE CONSENT
AGREEMENT
(38 M.R.S. § 347-A)

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of five (5) pages:

TOWN OF YORK

BY:  DATE: 11/5/2019
STEPHEN BURNS, TOWN MANAGER

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____ DATE: _____
MARK C. DRAPER, CHAIRPERSON

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: _____ DATE: _____
KATE TIERNEY, ASSISTANT ATTORNEY GENERAL

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