APPROVED
MAY 29, 2025
BY GOVERNOR

CHAPTER
122
PUBLIC LAW

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-FIVE

H.P. 151 - L.D. 228

An Act to Allow Coastal Seawalls to Be Raised by up to 2 Feet in Order to Accommodate Predicted Sea Level Rise

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the State in 2023 and 2024 experienced multiple significant storm events causing widespread and devastating floods and damaging public and private infrastructure across the State with particular impact along the coast, which experienced historically high and dangerous tides; and

Whereas, with an ever-increasing frequency of such storm events and a projected rise in sea levels and the associated risks to persons, property and resources, the citizens of the State must be able to enhance the resilience of public and private infrastructure to the effects of these storms; and

Whereas, the changes to the Natural Resources Protection Act proposed in this legislation must take effect immediately to facilitate the timely development of certain coastal resiliency projects; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 38 MRSA §480-E, sub-§15, as enacted by PL 2023, c. 97, §1, is amended to read:

15. Coastal sand dune system restoration projects; stabilization materials. The department may authorize through a permit or a permit by rule under this article a coastal sand dune system restoration project that uses allowable stabilization materials for the planting of native dune vegetation as long as the project meets the requirements of this subsection and satisfies all other applicable requirements for the permit or permit by rule.

A. Allowable stabilization materials may be used or placed only above the highest annual tide as measured at the time the project construction begins. Allowable stabilization materials may be used or placed in high-velocity zones, or V-Zones, as identified by the United States Department of Homeland Security, Federal Emergency Management Agency in effective flood insurance rate maps under the National Flood Insurance Program.

B. The slope of the constructed dune may not be steeper than the slope of the existing dune in which the allowable stabilization materials are used or placed, except where the constructed dune is placed on, or on the landward side of, an existing seawall.

C. Allowable stabilization materials must be used or placed in a manner designed to encourage the revegetation of the dune with native dune vegetation and, except where the constructed dune is placed on, or on the landward side of, an existing seawall, must remain covered with sand and native dune vegetation throughout and upon completion of the project.

D. Allowable stabilization materials containing or using gravel or cobble may be used or placed only in a dune primarily composed of gravel or cobble or directly adjacent to a beach that is primarily gravel or cobble. Placement of allowable stabilization materials containing or using gravel or cobble must involve the use of gravel or cobble from the dune system or beach or gravel or cobble of a similar texture and color of the gravel or cobble of the dune system or beach.

E. ~~A~~ Except as provided in paragraph F, a project that will use or place stakes, anchors or cables made from metal or other nonbiodegradable materials or fabrics, blankets or other stabilization materials made from polylactic acid polymers is not eligible for a permit by rule but may be issued a permit under this article.

F. A project that will use or place stakes, anchors or cables made from metal, whether alone or in conjunction with allowable stabilization materials, is eligible for a permit by rule under this article and in accordance with the requirements of this subsection only if the project is constructed on, or on the landward side of, an existing seawall.

The use or placement of allowable stabilization materials within a coastal sand dune system in accordance with a permit or a permit by rule authorized by the department pursuant to this subsection is not considered a permanent structure under this article.

For the purposes of this subsection, "allowable stabilization materials" means natural, plant-based biodegradable or compostable fabrics, erosion control blankets, logs or rolls made from coir, jute, straw, polylactic acid polymers or other similar materials, including materials that contain or use gravel or cobble, discarded holiday trees, other trees fallen or washed up in proximity to the site and stakes, anchors or cables used to secure those materials. For the purposes of this subsection, "native dune vegetation" means dune plant species typically adapted to coastal sand dune systems in the State, including, but not limited to, American beach grass, Rosa virginiana, bayberry, beach pea, beach heather and pitch pine. For the purposes of this subsection, "existing seawall" means a seawall that legally existed on January 1, 2025.

Sec. 2. 38 MRSA §480-E, sub-§19 is enacted to read:

19. Height increase of existing seawall in coastal sand dune system. Notwithstanding any provision of this article to the contrary, the department may authorize

a one-time increase in the height of a seawall or similar structure in a coastal sand dune system through a permit under this article if the following conditions are met.

A. The seawall legally existed on January 1, 2025 and the lot or parcel that contains the seawall:

(1) Is no larger than 15,000 square feet and contains a residential dwelling that legally existed on or was legally reconstructed after January 1, 2025;

(2) Is no larger than 25,000 square feet and contains a commercial building that legally existed on or was legally reconstructed after January 1, 2025; or

(3) Contains a road that legally existed on or was legally reconstructed after January 1, 2025.

B. The residential dwelling, commercial building or road on the lot or parcel that contains the seawall, as identified pursuant to paragraph A, is located within 25 feet, horizontal distance, of the landward side of the seawall, or the lot or parcel abuts one or more lots or parcels along the same shoreline that each contain seawalls that have been or are permitted to be increased in height pursuant to this subsection.

C. A sand dune located seaward of the seawall that remains dry during the highest astronomical tide plus 1.5 feet of sea level rise:

(1) Does not exist at the time of application; and

(2) As determined by the department, cannot be created through restoration, reconstruction or construction activities in accordance with the department's permit by rule standards.

D. The height of the seawall is increased by no more than 2 feet, as long as:

(1) The height of the seawall, after the increase, is not more than one foot above the base flood elevation; and

(2) The dimensions of the seawall are not otherwise modified.

The applicant may add sand, cobble or allowable stabilization materials on the landward side of the seawall to provide structural stability for the increase in the height of the seawall.

E. The applicant must agree to mitigate, through beach nourishment or other activities directed by the department, any increased scouring or erosion on the seaward side of the seawall that may result from the seawall height increase.

F. If there is sufficient space, as determined by the department, between the seawall and the residential dwelling, commercial building or road on the lot or parcel that contains the seawall, as identified pursuant to paragraph A, the applicant must, on the landward side of the seawall:

(1) Construct a sand dune covered with native dune vegetation in a manner consistent with department rule; or

(2) If there is not sufficient space to construct a sand dune, plant a vegetative buffer consisting of native dune vegetation.

G. If practicable, as determined by the department, the residential dwelling or commercial building on the lot or parcel that contains the seawall, as identified

pursuant to paragraph A, must be elevated on a post or piling foundation that allows for the free movement of water, wind and sand in a manner consistent with department rule and prior to or at the time that the seawall is increased in height pursuant to this subsection.

H. The seawall, if increased in height pursuant to this subsection, must connect to a seawall of the same or greater height on each abutting lot or parcel along the same shoreline, except that, if an abutting lot or parcel along the same shoreline does not contain a seawall that the seawall can connect to, the applicant must:

(1) Through legally binding agreement, including, but not limited to, an easement or contract, obtain permission for the seawall height increase from the owner of each abutting lot or parcel along the same shoreline that does not contain a seawall that the seawall can connect to; and

(2) Agree to mitigate, through periodic dune restoration or beach nourishment activities as directed by the department, any increased end-effect erosion on each abutting lot or parcel along the same shoreline that may result from the seawall height increase.

I. For any seawall that is part of a project involving an increase in the height of seawalls located on 5 or more abutting lots or parcels along the same shoreline, the seawall height increase on all the abutting lots or parcels may not be expected to result in an increase in the extent or intensity of a predicted 100-year flood event on other abutting or adjacent lots that may cause the Federal Emergency Management Agency to revise the relevant flood insurance map to account for that increase, as determined by the department based on a standard engineering analysis provided by the applicant and any other information available to the department.

This subsection does not prevent the department from permitting, in accordance with adopted rules, the replacement of an existing seawall with a seawall of different dimensions or in a different location that is further landward if the department determines that the replacement seawall would be less damaging to the coastal sand dune system, existing wildlife habitat and adjacent properties than replacing the existing seawall with a seawall of the same dimensions in the same location.

For the purposes of this subsection, "allowable stabilization materials" and "native dune vegetation" have the same meanings as in subsection 15.

Sec. 3. 38 MRSA §480-W, sub-§4, as enacted by PL 2005, c. 548, §2, is amended to read:

4. Replacement after emergency action under permit by rule. Notwithstanding any other provision of this chapter, the department shall approve a permit by rule to repair or replace a seawall, bulkhead, retaining wall or similar structure that has been destroyed or threatened with a structure that, except as provided in paragraph C, is identical in all dimensions and location as long as a property owner files a completed permit-by-rule notification for the repair or replacement of the structure and the following standards are met:.

A. During project construction, disturbance of dune vegetation must be avoided and native vegetation must be retained on the lot to the maximum extent possible. Any areas of dune vegetation that are disturbed must be restored as quickly as possible.

Dune vegetation includes, but is not limited to, American beach grass, ~~rugosa rose~~ Rosa virginiana, bayberry, beach pea, beach heather and pitch pine.

B. Sand may not be moved seaward of the frontal dune between April 1st and September 1st unless the owner has obtained written approval from the Department of Inland Fisheries and Wildlife.

C. The replacement of a seawall may not increase the height, length or thickness of the seawall beyond that which legally existed within the 24 months prior to the submission of the permit-by-rule notification but may increase the height of the seawall in accordance with section 480-E, subsection 19. The replaced seawall may not be significantly different in construction from the one that previously existed.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.