

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND THIRTEEN

—
S.P. 384 - L.D. 1102

An Act Regarding Reconstruction of Residential Structures on Sand Dunes

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

Whereas, routine technical rules regarding reconstruction of an existing structure in a frontal dune were adopted by the Department of Environmental Protection in 2012, pursuant to Public Law 2011, chapter 538; and

Whereas, changes in the conditions for approval of reconstruction of an existing structure on a frontal sand dune are needed before the summer building season in order to avoid harm to the coastal sand dune system; 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. PL 2011, c. 538, §15 is repealed.

Sec. 2. Repeal of current rules. The Department of Environmental Protection shall repeal rules adopted pursuant to Public Law 2011, chapter 538, section 15.

Sec. 3. Coastal sand dune rulemaking. The Department of Environmental Protection may adopt rules allowing for the reconstruction of an existing residential building whose entire footprint is in a back dune to be relocated in a frontal dune on the same lot on which the building is located if:

1. The existing residential building:
 - A. Is a permanent structure;

- B. Existed in a back dune on the lot and was landward of an existing seawall prior to June 8, 2006;
 - C. Was originally constructed in a back dune after August 1, 1983, in accordance with a permit issued by the department under the Natural Resources Protection Act; and
 - D. Is not severely damaged by wave action from an ocean storm;
2. The entire residential building when reconstructed:
- A. Is landward of an existing seawall;
 - B. Has a footprint that is 2,500 square feet or less, that is not located in a V-zone as identified on the effective Flood Insurance Rate Maps issued by the Federal Emergency Management Agency and that does not exceed 20% of the total area of the lot. The land area within the V-zone may not be included as part of the lot for purposes of this paragraph and up to 500 square feet of additional development may occur on the lot in order to provide parking and access, including handicap access;
 - C. Is elevated on posts as required in rules of the department regarding sand and water movement; and
 - D. Is no more than 35 feet in height, except that it may exceed 35 feet for the sole purpose of meeting the elevation requirements in rules of the department regarding sand and water movement;
3. The lot on which the residential building is reconstructed:
- A. Was a deeded lot of record as of August 1, 1983;
 - B. Is not precluded from development by any other federal, state or local requirements; and
 - C. Has an adjacent lot on each of its sides, along the length of the frontal dune, that contains a residential building that is located within 100 feet of the lot line and that existed on January 1, 2003; and
4. Relocation of the residential building on the frontal dune is minimized to the extent practicable, as determined by the department.

In approving reconstruction or relocation as authorized under this section, the rules may require sand dune mitigation and enhancement measures, including, but not limited to, restoring the dune topography and elevating the crest of the sand dune to at least one foot above the 100-year floodplain or wave run-up level and enhancing with native vegetation the portions of the lot that are not covered by buildings or parking areas.

Notwithstanding the Maine Revised Statutes, Title 38, section 480-AA, the initial rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A and may be adopted by the Commissioner of Environmental Protection in accordance with Title 38, section 341-H, subsection 2. Any amendments to the rules adopted pursuant to this section are major substantive rules and may be adopted by the Board of Environmental Protection in accordance with Title 38, section 341-H, subsection 1.

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