

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1276

H.P. 948

House of Representatives, March 11, 2003

An Act To Amend the Sand Dune Laws

Reference to the Committee on Natural Resources suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative LEMOINE of Old Orchard Beach.
Cosponsored by Representative KANE of Saco.

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

Sec. 1. 38 MRSA §480-B, sub-§1, as amended by PL 1997, c. 603, §1, is repealed and the following enacted in its place:

1. Coastal sand dune systems. "Coastal sand dune systems" means sand and gravel deposits within a marine beach system, including, but not limited to, beach berms, frontal dunes, dune ridges, back dunes and other sand and gravel areas deposited by wave or wind action. Coastal sand dune systems may extend into coastal wetlands. "Coastal sand dune systems" includes dunes that have been artificially created, dunes that have been altered by development activity and dunes supported by sand fencing or stabilization structures. Coastal sand dune systems naturally migrate landward through the process of overwash. For the purposes of this definition, a small windblown accumulation of sand within a street is not considered a dune.

Sec. 2. 38 MRSA §480-B, sub-§§1-A to 1-O are enacted to read:

1-A. A-zone. "A-zone" means an area of special flood hazard that is subject to a 1% or greater chance of flooding in any given year.

1-B. B-zone. "B-zone" means the area between the landward boundary of an A-zone and the presumed high-water mark of a 500-year flood. This zone also includes areas of 100-year shallow flooding where water depths are less than one foot or the flooded area is less than one acre.

1-C. Back dunes. "Back dunes" means sand dunes and eolian sand flats that lie landward of the frontal dune or a low-energy beach. Back dunes include those areas containing artificial fill over back dune sands or over wetlands adjacent to the coastal sand dune system.

1-D. Beach. "Beach" means the zone of unconsolidated sand or gravel that extends landward from the mean low-water line to the seaward toe of a dune. "Beach" includes the beach face and berm.

1-E. Beach face. "Beach face" means the portion of a foreshore that lies nearest to the sea and regularly receives the swash of breaking waves. The beach face is the steepest part of the foreshore.

1-F. Beach nourishment. "Beach nourishment" means the artificial addition of sand or gravel to a beach or subtidal area adjacent to a beach.

2 1-G. Berm. "Berm" means the flat or gently sloping area
3 between the high-tide limit and the frontal dune.

4 1-H. Building. "Building" means a roofed structure
5 designed for habitation, shelter, storage or use as a gathering
6 place. For the purposes of this article a foundation is
7 considered to be a part of a building. A building may also
8 include a porch attached to the exterior walls of the building.

9 1-I. Building's value. "Building's value" means:

10 A. The assessed value of a building as established by the
11 municipality where the building is located and adjusted by
12 the State's certified ratio as applied to the municipality
13 on the date that the application for a permit is accepted
14 for processing by the department or, if the application is
15 received after the work to the building has begun, the date
16 the work was started; or

17 B. The appraised value of a building as established by an
18 appraised market value assessment completed by a certified
19 appraiser chosen by the State within 5 years prior to the
20 date that the application for a permit is accepted for
21 processing by the department or, if the application for a
22 permit is received after the work to the building has begun,
23 the date the work was started.

24 1-J. Closed fence. "Closed fence" means a fence that
25 effectively blocks the movement of wind, water or sand.

26 1-K. Development. "Development" means the alteration of
27 property for human use, including, but not limited to, the
28 creation or alternation of buildings, decks, driveways, parking
29 areas, lawns, landscaped areas, areas of nonnative vegetation and
30 any other appurtenant facilities, but excluding temporary
31 structures.

32 1-L. Dune grass. "Dune grass" means a grass species
33 native to coastal sand dune systems with the scientific name
34 Ammophila breviligulata and commonly referred to as American
35 beach grass.

36 1-M. Dune restoration. "Dune restoration" means
37 restoration of a natural or artificially constructed dune through
38 the addition of sand and planting of dune vegetation.

39 1-N. Dune vegetation. "Dune vegetation" means a natural
40 dune plant community, including, but not limited to, dune grass,
41 rugosa rose, bayberry, beach pea, beach heather and pitch pine.

2 1-O. Erosion hazard area. "Erosion hazard area" means any
4 portion of the coastal sand dune system that can reasonably be
6 expected to become part of a coastal wetland in the next 100
8 years due to cumulative changes in the shoreline from:

10 A. Long-term erosion;

12 B. Short-term erosion resulting from a 100-year storm; or

14 C. Flooding from a 100-year storm after a 2-foot rise in
16 sea level.

18 1-P. Essential habitat. "Essential habitat" means an area
20 currently or historically providing physical or biological
22 features essential to the conservation of an endangered or
24 threatened species in the State and which may require special
26 management consideration.

28 **Sec. 3. 38 MRSA §480-B, sub-§§2-E to 2-H are enacted to read:**

30 2-E. FEMA. "FEMA" means the Federal Emergency Management
32 Agency.

34 2-F. 500-year flood. "500-year flood" means the estimated
36 probability of a flood event happening in any given year.

38 2-G. Footprint. "Footprint" means the outline that would
40 be created on the ground by extending the exterior walls of a
42 building to the ground surface. For the purposes of this
44 article, a porch is not considered when determining a building's
46 footprint.

48 2-H. Foundation. "Foundation" means the portion of a
50 structure that transmits the loads of the structure to the
52 ground, including, but not limited to, spread footings,
54 foundation walls, posts, piers, piles, beams, girders, structural
56 slabs, bracings and associated connectors.

58 **Sec. 4. 38 MRSA §480-B, sub-§4-A is enacted to read:**

60 4-A. Frontal dune. "Frontal dune" means the most seaward
62 ridge of sand and includes former frontal dune areas modified by
64 development. When the dune has been altered from a natural
66 condition, the dune position may be inferred from the present
68 beach profile, dune positions along the shore and regional trends
70 in dune width. The frontal dune may or may not be vegetated with
72 natural flora and may consist in part or in whole of artificial

2 fill. In areas where smaller ridges of sand are forming in front
3 of an established dune ridge, the frontal dune may include more
4 than one ridge.

6 **Sec. 5. 38 MRSA §480-B, sub-§§5-B to 5-D are enacted to read:**

8 5-B. Lot. "Lot" means all contiguous areas under a single
9 ownership constituting a piece of land measured and marked by
10 metes and bounds descriptions or by some other approved surveying
11 technique.

12 5-C. Maintenance and repair. "Maintenance and repair"
13 means work done to less than 50% of a structure to prevent
14 decline, to hold or preserve it in an existing state or condition
15 or to restore it to sound condition after damage or decay.

16 5-D. National Geodetic Vertical Datum or NGVD. "National
17 Geodetic Vertical Datum" or "NGVD" means the base elevation point
18 from which land measurements are derived.

20 **Sec. 6. 38 MRSA §480-B, sub-§§6-A to 6-C are enacted to read:**

22 6-A. Ocean storm. "Ocean storm" means a low-pressure
23 system often accompanied by flooding or erosion of the coastal
24 sand dune system.

26 6-B. Open fence. "Open fence" means a fence through which
27 water, wind and sand can easily move.

28 6-C. Overwash. "Overwash" means the deposit left after a
29 highwater pulse over tops or breaches the dune line of a barrier
30 beach.

32 **Sec. 7. 38 MRSA §480-B, sub-§7, as amended by PL 1999, c. 243,**
33 **§11, is repealed and the following enacted in its place:**

34 7. Permanent structure. "Permanent structure" means any
35 structure constructed or erected with a fixed location or
36 attached to a structure with a fixed location for a period
37 exceeding 7 months each year. "Permanent structure" includes,
38 but is not limited to: causeways, piers, docks, concrete slabs,
39 piles, marinas, retaining walls, buildings, swimming pools,
40 fences, seawalls, roads, driveways, parking areas and walkways.
41 Natural features, such as frontal dunes, are not considered
42 permanent structures. For the purposes of this article the
43 following are not considered to be permanent structures:

44 A. Open decks that do not exceed a total of 200 square feet
45 that are supported by posts and are elevated at least 3
46 feet above the ground.

2 feet above existing grade to allow unobstructed flow of
3 sand, wind and water and are not located in a V-zone; and

4 B. One storage shed per lot that does not exceed 100 square
5 feet, as long as it is not located in a V-Zone and is not
6 converted to a habitable structure.

8 **Sec. 8. 38 MRSA §480-B, sub-§§7-A and 7-B** are enacted to read:

10 **7-A. Post.** "Post" means any piling or column support that
11 allows water and sand to move freely underneath the structure and
12 that is adequate to provide a foundation for the structure it
13 supports. "Post" does not include a frost wall or breakaway
14 foundation construction.

16 **7-B. Project.** "Project" means any activity that is
17 regulated pursuant to this article and is located in the coastal
18 sand dune system.

20 **Sec. 9. 38 MRSA §480-B, sub-§§8-B to 8-D** are enacted to read:

22 **8-B. Reconstruction.** "Reconstruction" means any
23 rehabilitation, replacement or other building improvement that
24 costs more than 50% of the building's before reconstruction.

26 **8-C. Seawall.** "Seawall" means a vertical wall or other
27 sloped barrier that separates land from water areas, commonly
28 constructed out of rocks, wood, concrete or similar materials,
29 generally built for the purpose of protecting structures or
30 property from shoreline erosion caused by wave or current action.

32 **8-D. Severe damage.** "Severe damage" means damage for which
33 repair or replacement costs exceed 50% of a building's value.

34 **Sec. 10. 38 MRSA §480-B, sub-§§11 to 14** are enacted to read:

36 **11. Temporary structure.** "Temporary structure" means a
37 structure that is intended for seasonal use and in place for 7
38 months or less each year.

40 **12. V-zone.** "V-zone" means an area of special flood hazard
41 that is subject to a 1% or greater chance of flooding in any
42 given year, and subject to additional hazard from high-velocity
43 water due to wave action.

44 **13. Wave runup level.** "Wave runup level" means the amount
45 of wave runup that is the vertical distance between the

2 maximum height on the beach the rush of water reaches and the
3 still water level.

4 14. X-zone. "X-zone" means an area between an A-zone and
5 the presumed high-water mark of a 500-year flood. This zone also
6 includes areas of 100-year shallow flooding where water depths
7 are less than one foot or the flooded area is less than one acre
8 in size.

10 **Sec. 11. 38 MRSA §480-C, sub-§4** is enacted to read:

12 4. Review not required. This subsection clarifies which
13 activities in coastal sand dune systems do not require approval
14 pursuant to this article.

16 A. The following activities have minimal impact and do not
17 require a permit under subsection 2:

18 (1) Construction of a walkway or path on an area of a
19 lot that has already been developed;

22 (2) Removal of debris from a beach, as long as little
23 or no sand is removed with the debris;

24 (3) The addition of loam, up to 3 inches in depth, to
25 maintain an existing lawn;

28 (4) Removal of sand from lawns, walkways, roads,
29 driveways, parking areas and buildings, as long as the
30 sand is placed back into the coastal sand dune system
31 without disturbing beach vegetation. Sand placed on
32 the beach must be spread out to a height no greater
33 than 3 inches above the existing beach grade;

34 (5) The placement of an open fence in the coastal sand
35 dune system to keep pedestrian traffic off dune
36 vegetation or away from shore bird nesting or breeding
37 areas;

40 (6) The replacement of an existing partial or full
41 foundation with a post or piling foundation that
42 complies with the requirements of section 480-AA,
43 subsection 4 and section 480-BB, subsection 5 and
44 allows for the free movement of sand and water and
45 remains in the existing footprint; and

46 (7) Construction of a municipal sewer or storm water
47 outfall pipe that is buried and that has received
48 approval from the department under department rule.

2 including appurtenant structures that might be located
3 in an upland area.

4 B. Construction of a temporary structure does not require a
5 permit.

6
7 **Sec. 12. 38 MRSA §480-Q, sub-§2, ¶¶C and D, as repealed and**
8 **replaced by PL 1995, c. 27, §1, are amended to read:**

9 C. There is no additional intrusion into the protected
10 natural resource; and

11
12 D. The dimensions of the repaired structure do not exceed
13 the dimensions of the structure as it existed 24 months
14 prior to the repair, or if the structure has been officially
15 included in or is considered by the Maine Historical
16 Preservation Commission eligible for listing in the National
17 Register of Historic Places, the dimensions of the repaired
18 structure do not exceed the dimensions of the historic
19 structure; and

20
21 **Sec. 13. 38 MRSA §480-Q, sub-§2, ¶E is enacted to read:**

22 E. The foundation type and the dimensions of the foundation
23 remain the same.

24
25 **Sec. 14. 38 MRSA § 480-Q, sub-§26 is enacted to read:**

26 26. Underground storage tank. The maintenance and repair
27 are to an underground storage tank in any area regulated by this
28 article.

29 **Sec. 15. 38 MRSA §480-W, as enacted by PL 1995, c. 230, §1,**
30 **is repealed.**

31 **Sec. 16. 38 MRSA §§480-AA to 480-EE are enacted to read:**

32 **§480-AA. Standards for all projects**

33 **1. Time frame for building reconstruction.** All building
34 reconstruction that does not qualify as maintenance and repair
35 under section 480-B, subsection 5-C and section 480-Q, subsection
36 2 requires a permit. The building to be reconstructed must exist
37 on the date an application for such a permit is accepted for
38 processing by the department or must have lawfully existed within
39 one year of the date an application is accepted for processing by
40 the department.

41 **2. Development on individual lots.** Development on an
42 individual lot is restricted by this subsection.

2 A. No more than 40% of a lot may be covered by development,
4 including land area previously developed. Lawns and other
 areas filled for landscaping are considered development and
 must be included in the development calculations.

6 B. When development that exists or did exist within one
8 year of the date that the application is accepted for
10 processing by the department pursuant to subsection 1
 exceeds 40% of the total lot area, the percentage of
 developed area may not be increased.

12 C. Land area within the V-zone may not be included as part
14 of a lot for the purposes of this section.

16 D. A building may not be constructed so that any part
18 extends seaward of a line drawn between the seaward-most
 points of buildings on adjacent properties when the
 construction would significantly obstruct the view from an
 adjacent building.

20 3. Shoreline changes within 100 years. A project may not
22 be permitted pursuant to subsection 1 if, within 100 years, the
24 property may reasonably be expected to be eroded as a result of
26 changes in the shoreline so that the project is likely to be
 severely damaged after allowing for a 2-foot rise in sea level
 over 100 years. Beach nourishment and dune restoration projects
 are excluded from this requirement.

28 4. Building size restrictions. A building greater than 35
30 feet in height or covering a ground area greater than 2,500
32 square feet may not be constructed in a coastal sand dune system
34 unless the applicant for a permit pursuant to subsection 1
36 demonstrates by clear and convincing evidence that the site will
38 remain stable after allowing for a 2-foot rise in sea level over
40 100 years. Reliance upon an existing seawall is not sufficient
 as evidence of site stability. An existing building may be
 elevated on a post or pile foundation to exceed 35 feet for the
 sole purpose of meeting the elevation requirements in section
 480-BB, subsection 5 and section 480-CC, subsection 3 without the
 need to demonstrate that the site will remain stable after
 allowing for sea level rise.

42 When determining the height of the building, the measurement is
44 taken from the existing, lowest natural elevation within the
46 building's footprint if the lot is undeveloped, the lowest
48 natural elevation measured 5 feet from the corners of an existing
 building's foundation or the elevation used by the municipality
 when determining compliance with local ordinances.

2 5. Seawalls. A new seawall may not be constructed. An
3 existing seawall may not be expanded or replaced except as
4 provided under department rule.

6 6. Designated essential habitat and significant wildlife
7 habitat. A project may not unreasonably harm designated
8 essential habitat or significant wildlife habitat within the
9 coastal sand dune system. A project located partially or wholly
10 within an area designated as essential habitat must obtain an
11 essential habitat evaluation from the Department of Inland
12 Fisheries and Wildlife.

14 7. Fences. To allow for the movement of sand and water, a
15 closed fence may not be placed in any A-zone, B-zone, V-zone or
16 X-zone.

18 8. Legal access. A project may not unreasonably interfere
19 with legal access to or use of public resources.

20 9. Restoration of disturbed areas. All areas disturbed in
21 violation of subsection 3 must be returned to their original
22 condition within one year after completion of construction.

24 **§480-BB. Standards for frontal dune projects**

26 1. General standards. Each frontal dune project must meet
27 the standards for all projects listed in section 480-AA.

28 2. New construction on frontal dunes. A new structure or
29 addition to an existing structure may not be constructed on or
30 seaward of a frontal dune with the exception of the following:

32 A. An elevated boardwalk constructed perpendicular to the
33 beach face, open fences, walkways and driveways;

36 B. A fire escape constructed on an existing building or
37 structure as required by local fire codes;

38 C. A ramp that is required for compliance with the
39 requirements of the Americans with Disabilities Act, as long
40 as the building served by the ramp meets those requirements,
41 and a public ramp providing access to a beach;

44 D. The construction of vertical building additions and the
45 addition of dormers as long as:

46 (1) The addition does not extend horizontally beyond
47 the footprint covered by the existing building;
48

2 (2) The addition does not increase the building's
4 total height to greater than 35 feet above the lowest
6 natural elevation measured 5 feet from the corners of
 the existing building foundation or the elevation used
 by the municipality when determining compliance with
 local ordinances; and

8 (3) The building is not a garage or a storage shed; and

10 E. Notwithstanding subsection 3, the construction of a new
12 building or buildings on an undeveloped lot as long as the
14 following requirements are met. These requirements do not
 apply to a lot vacant due to demolition or destruction of
 buildings after August 1, 1983.

16 (1) The undeveloped lot was a deeded lot of record as
18 of August 1, 1983.

20 (2) The adjacent lot on each side of the undeveloped
22 lot, along the length of the frontal dune, contains a
24 residential building that is located within 100 feet of
 the lot line of the vacant lot. In order to qualify
 for this exception, the residential buildings on the
 adjacent lots must have been in existence on January 1,
 2003.

26 (3) Development on the undeveloped lot is not
28 precluded by any other federal, state or local
30 requirements.

32 (4) All available variances of municipal regulations
34 that would allow the project to proceed in compliance
 with the standards in section 480-CC have been ruled
 upon and rejected by the municipality.

36 (5) Any building on the undeveloped lot is constructed
38 at the greatest distance possible from the beach face,
 as determined by the department.

40 (6) The total area covered by a building or buildings
42 does not exceed 20% of the total area of the
44 undeveloped lot. Up to 500 square feet of additional
 development may occur on the undeveloped lot in order
 to provide parking and access, including access for the
 purposes of meeting requirements established by the
 Americans with Disabilities Act.

48 (7) Any building is elevated on posts as described in
50 subsection 5.

(8) As a condition of any construction under this subsection, the department may require sand dune mitigation and enhancement measures, including restoring the dune topography and elevating the crest of the sand dune to the 100-year flood or wave runup level, and any enhancement with native vegetation of the portions of the lot not covered by buildings or parking areas that the department requires.

3. Construction in V-zone. A new structure or addition to an existing structure may not be constructed in a V-zone except for open fences and fire escapes as required by local fire codes. A building in a V-zone may not be reconstructed unless one or more of the following standards, in addition to the standards in subsection 5 and section 480-AA, are met as determined by the department.

A. The building was involuntarily destroyed by fire or some other force other than wave action from an ocean storm and the reconstructed building does not exceed the dimensions of the previously existing building, except that the building's height may be increased to meet the standards in subsection 5. The reconstructed building must be in the same location or a location no further seaward than the previously existing building and must have the same size footprint.

B. The building is located in a V-zone first designated after January 1, 1999 by FEMA for the National Flood Insurance Plan.

C. The building was involuntarily destroyed by wave action from an ocean storm and the reconstructed building does not exceed the dimensions of the previously existing building except that the building's height may be increased to meet the standards in subsection 5. The reconstructed building must be in the same location or a location no farther seaward than the previously existing building and must have the same size footprint.

A building that is reconstructed in accordance with this subsection may not be reconstructed more than once.

4. Reconstructed buildings. A building may be reconstructed in the same location or a location no farther seaward than the previously existing building. The reconstruction of the building may not increase the footprint of the building. A reconstructed building may not exceed the height or dimensions of the previously existing building unless the project also constructs a vertical addition that meets all the

requirements of subsection 2, paragraph D or elevates the building to meet the requirements of subsection 5.

5. Sand and water movement. To allow for the movement of sand and water and future shoreline changes, all buildings modified or reconstructed pursuant to subsection 2, paragraph D or subsection 4, except for detached buildings that are used as storage sheds, public bathhouses and garages, must have the lowest portion of the structural members of the lowest floor constructed on a post or piling foundation, and be elevated either:

A. Three feet above the highest existing elevation within the building's footprint or the highest natural elevation measured 5 feet from the corners of the existing building foundation; or

B. To the elevation required in the local municipal floodplain ordinance, whichever is greater.

The post or piling foundation may be enclosed with latticework or similar material through which water, wind and sand can easily move.

§480-CC. Standards for back dune projects

1. General standards. Each back dune project must meet the standards for all projects listed in section 480-AA.

2. Development on individual lots. No more than 20% of the total area of a lot may be covered by buildings. If building coverage exceeds 20% of the total area on the date an application is accepted for processing by the department pursuant to section 480-AA, subsection 1, or did exceed 20% of the total lot area within one year of the date that an application is accepted for processing by the department, the percentage of area covered by buildings may not be increased.

3. Unstable back dune areas. Certain back dune areas may be identified by the department as erosion hazard areas. New buildings, additions to existing buildings and reconstructed buildings located in those areas must meet the standards of section 480-BB, subsection 5.

§480-DD. Variances

1. Variance. The department may grant a variance from section 480-AA, subsection 2, paragraph C and 480-BB, subsections 2 and 3 in whole or in part for the construction of a building on a previously undeveloped lot under single ownership.

2 A. An applicant pursuant to section 480-AA, subsection 1 is
3 eligible for a variance pursuant to this section if the
4 applicant meets one of the 2 qualifying conditions below.

6 (1) A court has determined that the denial of a permit
7 under this section would constitute a constitutional
8 taking of property; or

10 (2) The department finds that strict application of
11 the standard from which a variance is sought would
12 result in undue hardship. The department may find that
13 undue hardship exists only when:

14 (a) The undeveloped lot was a deeded lot of
15 record as of August 1, 1983;

18 (b) The property can not be put to a reasonable
19 economic use unless a variance is granted. In
20 making this determination, the department shall
21 consider evidence of the value of the property
22 when it was purchased or acquired, the reasonable
23 expectations of the applicant for use of the
24 property when it was purchased or acquired and the
25 value and possible uses of the property without
26 the requested variance;

28 (c) The hardship is not the result of action
29 taken by the applicant or a prior owner; and

30 (d) There are no practicable measures or
31 alternatives that would allow the project to
32 proceed in compliance with the standard from which
33 a variance is sought. The applicant shall
34 demonstrate that the applicant has explored all
35 alternatives that would allow the project to
36 proceed in compliance with the standard from which
37 a variance is sought and shall explain to the
38 satisfaction of the department why each such
39 alternative is unavailable or unreasonable.

42 B. After an applicant pursuant to subsection 480-AA,
43 subsection 1 has demonstrated that the applicant is eligible
44 for a variance under paragraph A, the applicant shall also
45 demonstrate that the proposed project meets both the
46 applicable standards of sections 480-AA and 480-BB of this
47 chapter, for which a variance is not being granted, and the
48 following standards. The following standards are intended
49 to help minimize the impact on protected natural resources.

2 (1) The proposed building must be built at the
4 location on the lot that is the greatest distance
 reasonably possible from the beach face, as determined
 by the department.

6 (2) The proposed building must be elevated on posts as
 described in section 480-BB, subsection 5.

8 (3) The total area covered by a building may not
10 exceed 20% of the total area of the undeveloped lot. Up
12 to 500 square feet of additional development may occur
14 on the undeveloped lot in order to provide parking and
 access, including access for the purposes of meeting
 requirements established by the Americans with
 Disabilities Act.

16 As a condition for the issuance of a variance, the
18 department may require sand dune mitigation and enhancement
20 measures. Sand dune mitigation and enhancement measures
22 include activities such as restoration of the dune
24 topography, including the elevation of the crestline to the
 100-year flood or wave runup level, and provisions to
 enhance with native vegetation the portions of the lot not
 covered by buildings or parking areas. Sand dune mitigation
 and enhancement measures must be completed and adequately
 maintained if required by the department.

28 C. A variance may not be granted under this section when a
30 permit has been granted under this variance provision for
32 the same deeded lot if the previously permitted building on
34 the lot was destroyed by the encroachment of water or an
 ocean storm. A variance may not be granted under this
 section if the building was previously reconstructed as
 pursuant to section 480-BB, subsection 3, paragraph A.

36 D. In addition to the notice requirements determined by
38 rule, any person applying for a variance under this section
40 must send a notice of intent to file the application by
 certified mail to any person who owns land located within
 150 feet of the boundary of the property to be developed.

42 2. Variance from sand and water movement. The department
44 may grant a variance from section 480-BB, subsection 5 if the
 department determines that the following condition has been met.

46 A. The department finds that strict application of the
48 standard contained in section 480-BB, subsection 5 would
 result in undue hardship. The department may find that
 undue hardship exists only when:

2 (1) The hardship is not the result of action taken by
the applicant or a prior owner; and

4 (2) There are no practicable measures or alternatives
that would allow the project to proceed in compliance
6 with section 480-BB, subsection 5. The applicant must
demonstrate that the applicant has explored all
8 alternatives that would allow the project to proceed in
compliance with section 480-BB, subsection 5 and must
10 explain to the satisfaction of the department why each
such alternative is unavailable or unreasonable.

12 **§480-EE. Standard conditions of permits**

14 The following standard conditions apply to any permits
16 granted under this article unless the permit specifically states
otherwise.

18 **1. Shoreline recession.** If the shoreline recedes so that a
20 coastal wetland, as defined under section 480-B, subsection 2,
extends to any part of the structure, including support posts but
22 excluding seawalls, for a period of 6 months or more, then the
approved structure along with appurtenant facilities must be
24 removed and the site must be restored to natural conditions
within one year.

26 **2. Removing debris.** Any debris or other remains from
28 damaged structures on the property must be removed from the
coastal sand dune system.

30 **3. Natural dune vegetation.** The permit holder shall
32 restore any disturbed areas of natural dune vegetation as quickly
as possible.

34 **4. Approval of variations from plans.** The granting of a
36 permit is dependent upon and limited to the proposals and plans
contained in the application and supporting documents submitted
38 by the applicant. Any variation from these plans, proposals and
supporting documents is subject to review and approval prior to
40 implementation.

42 **5. Compliance with all applicable laws.** The permit holder
shall secure and comply with all applicable federal, state and
44 local licenses, permits, authorizations, conditions, agreements
and orders prior to or during construction and operation, as
46 appropriate.

48 **6. Compliance with all permit terms and conditions.** The
permit holder shall submit all reports and information requested
50 by the department, demonstrating that the applicant has complied

2 or will comply with all terms and conditions of this permit. All
3 preconstruction terms and conditions must be met before
4 construction begins.

6 7. Initiation of activity within 2 years. If construction
7 or operation of the activity is not begun within 2 years of the
8 issuance of the permit, the permit lapses and the applicant must
9 reapply for a new permit. The applicant may not begin
10 construction or operation of the activity until a new permit is
11 granted. Reapplications for permits must state the reasons why
12 the activity was not begun within 2 years from the granting of
13 the initial permit and the reasons why the applicant will be able
14 to begin the activity within 2 years from the granting of a new
15 permit, if so granted. Reapplication for permits may include
16 information submitted in the initial application by reference but
17 must include documentation of any changes on the site.

18 8. Reexamination after 5 years. If the approved activity
19 is not completed within 5 years from the date of the granting of
20 a permit, the department may reexamine its permit approval and
21 impose additional terms or conditions to respond to significant
22 changes in circumstances or to bring the approved activity into
23 compliance with current legal requirements.

24 9. Permit included in contract bids. A copy of the permit
25 must be included in or attached to all contract bid
26 specifications for the approved activity.

28 10. Permit shown to contractor. Work done by a contractor
29 pursuant to the permit may not begin before the applicant has
30 shown the contractor a copy of the permit.

34 SUMMARY

36 This bill amends the laws regulating construction on sand
dunes.