

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 7

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February 8, 2022

To: Interested Parties

RE: Response to public comments received
DEC ID 7-3599-00040/00003
Richland-Sandy Creek Joint Water Project Coastal Erosion Management Permit
Application

Dear Interested Parties,

Thank you for the comments you provided during the public notice period of the above referenced permit application. The New York State Department of Environmental Conservation (DEC) received 20 response letters during the public comment period. The public comments are organized into 14 categories and DEC's responses are as follows.

1. **Summary of Public Comment:** Lack of clean reliable water

DEC Response: The Town's permit application and variance criteria material stated, "private water supplies to residents in the subject Coastal Erosion Hazard Area (CEHA) historically have been unreliable and problematic," but did not include information or documentation supporting this statement. The new water line is a development that the CEHA Regulations prohibit, and the Towns must first consider alternatives to this development. The public comments that the residents submitted provided an account of personal historical experiences, but an in-depth, critical, engineering analysis of all water sources, which DEC requested, was not provided to substantiate the claim that a new water line was the only possible source of water. Additionally, in February of 2020, the Towns modified the proposal to include two water filling stations sited outside of CEHA. The new water filling stations, proposed at the northern and southern end of the Barrier Dune, will supplement existing sources of water for the community between S. Sandy Pond Inlet Road and N. Rainbow Shores Road. This will avoid an impact to the sensitive, protected, natural resource.

2. **Summary of Public Comment:** Fire protection, or lack thereof

DEC Response: The application material did not provide information showing a critical lack of water for fire suppression or a lack of firefighting services available to the residents on the Barrier Dune. The Town and County Emergency Management Services are prepared to respond to fires in all areas of the Town which rely solely on well water. Additionally, based upon the 2020 approved



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plans, there will be a fire hydrant adjacent to 101 N. Rainbow Shores Road on the southern end of the barrier dune and one located adjacent to 3352 County Route 15 on the northern end of the barrier dune. Of the 47 properties located on the Barrier Dune, which are not receiving municipal water, none will be further than 0.5 miles from a hydrant.

3. **Summary of Public Comment:** The Sandy Creek Town Council, acting as lead agency in a coordinated State Environmental Quality Review (SEQR) of the Richland and Sandy Creek combined water service project, determined there would not be a significant environmental impact, and issued a negative declaration.

DEC Response: In 2017 the Sandy Creek Town Council (or town board) conducted a coordinated State Environmental Quality Review (SEQR) of the Town of Sandy Creek and Town of Richland Joint Water Project and determined that the project will result in no significant adverse impact on the environment, and consequently determined that an environmental impact statement need not be prepared.

Nonetheless, in completing the environmental assessment form (EAF), the Town of Sandy Creek does not appear to have considered the CEHA related issues. The Town checked “no” in response to whether the project site is located in a Coastal Erosion Hazard Area (see Part 1 of the full environmental assessment form Page 2 Question Bii). Part 2 of the EAF, question 1g. the proposed action is, or may be located with a Coastal Erosion hazard area is checked “No, or small impact may occur” with an ‘NI’ notation. Part 3 of the EAF asks the lead agency to provide “a detailed discussion of all the potential impacts identified in Part 2 of the FEAF...” In section 2.1 of this document, under the Impact on Land discussion, question 1g, relating to coastal impacts, that impact was not addressed. Thus, the Town Board did not address the critical CEHA related issues that might otherwise be addressed in the SEQRA review.

Additionally, SEQR does not change the existing jurisdiction of agencies nor the jurisdiction between or among state and local agencies, as explained in the regulations that implement SEQR at 6 NYCRR 617.3(b). Under the regulations that implement the Coastal Erosion Hazard Area law, the Department is required to apply the findings at 6 NYCRR 505.13 to variance requests as the Town’s negative declaration does not supersede the requirements of 6 NYCRR Part 505 (Coastal Erosion Management Regulations), which have not been met here.

4. **Summary of Public Comment:** Potential for additional development is limited by DEC regulatory oversight.

DEC Response: The comment presumes outcomes of future permit application reviews (e.g., permit denials) that cannot be prejudged or relied on in the present decision.

5. **Summary of Public Comment:** Little to no risk of erosion because residents have armored the shoreline at considerable expense. There is no data which supports erosion concerns in this area, and DEC failed to provide requested erosion data. Per the newsletter titled “Sandy Pond Dunes Erosion and Protection Summer 2017” DEC evaluated the dune systems and found no immediate threat of a breach.

DEC Response: Please see section “(2-3) the development will be reasonably safe from flood and erosion damage” in the notice of permit denial.

Pete Backus, a property owner on North Rainbow Shores Road, requested erosion data from DEC on 12/18/2020, 01/11/2021, and 03/01/2021. DEC responded to these requests on 12/23/2020, 01/22/21, and 03/10/2021 with a link to download the data from the National Oceanic and Atmospheric Administrations (NOAA), and a link to download Lake Ontario imagery files. This information was also provided to the Towns in the March 19, 2021, Notice of Incomplete Application.

NOAA’s Office of Coastal Management maintains digital elevation data (lidar) for Lake Ontario. Digital elevation data is used to track erosion rates along the lake shoreline. As erosion occurs along the coastline, elevations change. An analysis of elevation changes over time illustrates erosion rates. From the NOAA Digital Coast web page “About Digital Coast:”

The Digital Coast was developed to meet the unique needs of the coastal management community. The website provides not only coastal data, but also the tools, training, and information needed to make these data truly useful. Content comes from many sources, all of which are vetted by NOAA.

Data sets range from economic data to satellite imagery. The site contains visualization tools, predictive tools, and tools that make data easier to find and use. Training courses are available online or can be brought to the user’s location. Information is also organized by focus area or topic (NOAA, n.d.).

In addition to elevation data sets, the NOAA Digital Coast website has tips for first-time users, a frequently asked question (FAQ) document, and an online “contact us” form for specific questions related to the website.

The “Sandy Pond Dunes Erosion and Protection Summer 2017” newsletter was intended to provide background information on the dune systems, identify impacts from the high-water conditions of 2017, advance understanding of intervention options available to property owners, and show how New York State can assist through technical and financial resources. Breaches are defined as a complete loss or failure of a barrier bar section. Although a breach never occurred at the Barrier Dune, there was substantial erosion along the lakeshore which threatened the homes and roads. The number of DEC permits issued to repair the shoreline demonstrates the severity of erosion on the Barrier Dune.

6. **Summary of Public Comment:** Express support of the project overall

DEC Response: Acknowledged.

7. **Summary of Public Comment:** The variance criteria have been met and the permit should be issued.

DEC Response: Please see the attached permit denial notice.

8. **Summary of Public Comment:** The natural protective feature of the dune has been reduced due to development, and this area does not fit the definition of a dune.

DEC Response: The purpose of the Coastal Erosion Management program is to protect public and private investment by limiting development in high-risk areas and protecting the functions of the natural protective features. NPFAs are delineated on DEC’s CEHA maps and are subject to Part 505 regulations. NPFAs are mapped based on the most landward coastal feature such as beaches, dunes, bluffs, and nearshore areas. Per 505.2(l), a dune means a ridge or hill of loose, windblown, or artificially placed earth, the principal component of which is sand. The Barrier Dune is made up of sand and is classified as a dune. Development that existed before and following the effective date of the CEHA maps do not change the NPFA designation for this area.

9. **Summary of Public Comment:** DEC denied the variance request and Coastal Erosion Permit during the 2019-2020 permit application process.

DEC Response: DEC did not deny the variance before issuing the initial permits in May of 2020 for the entire joint water service area project. However, in January of 2020, DEC informed the Towns of the regulatory concerns with the portion of the proposed project in the CEHA. A letter to the town stated:

While this portion of the project may not be approvable, DEC does not object to the remainder of the project and believes a modified plan that does not include development within the Barrier Dune can be permitted.

Regional Director Matthew Marko would like to invite the Towns and Barton & Loguidice to the Region 7 Office to meet and discuss what steps can be taken to move it forward. Once you have discussed this with your staff, I [Kevin Balduzzi, DEC] will coordinate a meeting through Barton & Loguidice that fits everyone's schedule.

Following this letter, DEC met with the Towns in the Syracuse DEC Region 7 office. After the meeting, the Towns submitted an updated plan that removed the proposed waterline section in the coastal area. DEC did not deny the 2019 Coastal Erosion Management Permit Application; the Towns modified their proposal and submitted plans to DEC which removed the waterline through this area at that time.

10. **Summary of Public Comment:** Plastic gallon containers are used to bring in potable water. The new waterline would alleviate dependence on plastics.

DEC Response: The Towns' proposed water filling stations would allow for reusable water containers, minimizing the need to purchase new plastic one-time-use containers.

11. **Summary of Public Comment:** DEC's mission statement includes protecting the natural resource and supporting the health and safety of the public.

DEC Response:

DEC's Mission Statement: "To conserve, improve and protect New York's natural resources and environment and to prevent, abate and control water, land and air pollution, in order to enhance the health, safety and welfare of the people of the state and their overall economic and social well-being."

DEC's goal is to achieve this mission through the simultaneous pursuit of environmental quality, public health, economic prosperity and social well-being, including environmental justice and the empowerment of individuals to participate in environmental decisions that affect their lives (NYSDEC, n.d.).

DEC is committed to upholding the core mission statement. Throughout the permit application review, DEC staff performed a comprehensive environmental analysis to ensure the project balanced the environment with social and economic considerations. In addition to upholding the mission statement, DEC is responsible for administering permits authorized by the Environmental Conservation Law (ECL). Activities and projects regulated by the ECL must comply with the NYCRR requirements. For example, construction of a new water main within a NPFA is prohibited per 6 NYCRR Part 505.8(d)(5). The Town's application requested a variance from this restriction, and DEC determined that the proposal does not meet the variance requirements (6 NYCRR Part

505.13(a)(1-5)). Therefore, the Coastal Erosion Management Permit Application is denied.

12. **Summary of Public Comment:** The water line is being trenched down the center of S. Sandy Pond Inlet Road and N. Rainbow Shores Road, which appears to be behind the Natural Protective Feature Line.

DEC Response: As previously stated, construction of a new water main within a CEHA NPFA is prohibited per 6 NYCRR Part 505.8(d)(5). On the project's northern end, the proposed waterline would have crossed into the NPFA at the Ford Drive, YMCA Bridge located east of the Sandy Island Beach State Park. At the southern end of the project, the proposed waterline would have crossed into the NPFA adjacent to 109 N. Rainbow Shores Rd. Between these two points, the proposed waterline would have traveled in and out of the mapped NPFA at multiple locations. Regardless of this, installing the waterline within the NPFA is prohibited. Since the DEC has determined that the proposal does not meet variance requirements, it cannot cross through the initial NPFA line intersect at the northern or southern end.

13. **Summary of Public Comment:** High waters inundate wells with contaminated surface water. The new norm of high water means this will happen more frequently.

DEC Response: Denial of the water main does not preclude individual landowners from updating their existing private wells. Permit applications for well upgrades can be submitted to the Region 7 Permits office. In addition, the Towns plan to install water filling stations at the north and south ends of the barrier dune, outside of the Coastal Erosion Hazard Area. These filling stations will provide supplemental water to the residents while avoiding an impact on sensitive natural resources.

14. **Summary of Public Comment:** DEC's opposition is not based on the code, it appears to be punitive in nature.

DEC Response: DEC reviews each permit application through an impartial, objective process. Each project, and permit application, has a unique set of circumstances and impacts. DEC reviews each project individually, but regulatory standards are applied uniformly to all applications to guarantee an unbiased decision-making process. Per 6 NYCRR Part 505.8(d)(5), all development is prohibited on primary dunes unless specifically allowed by subdivision. The Town's application requested a variance from this restriction, and DEC determined that the proposal does not meet the variance requirements (6 NYCRR Part 505.13(a)(1-5)). DEC made this determination after a thorough and impartial review of the application material and administration of the regulatory prohibitions.

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Works Cited

NOAA. (n.d.). *About Digital Coast*. Retrieved from NOAA Office for Coastal Management Digital Coast: <https://coast.noaa.gov/digitalcoast/about/>

NYSDEC. (n.d.). *About DEC*. Retrieved from NYSDEC: <https://www.dec.ny.gov/24.html>