

DRAFT Waste Removal on Chebeague Island DRAFT

Prior to 1993, the Town of Cumberland maintained a landfill (dump) on Chebeague Island which received all solid waste on the Island. It was deemed to be “in a very disadvantageous position with respect to groundwater recharge.”

Chebeague's landfill was scheduled to close in 1988. Two extensions of the closure order delayed action until 1993 at which time the landfill was closed and capped and the Transfer Station was opened with solid waste to be barged off the Island.

However, solid waste barging was problematic because:

1. The Town of Yarmouth prohibited transporting solid waste across Cousins Island
2. Chebeague Transportation Company (CTC) did not have the ability to transport trash containers elsewhere
3. Casco Bay Lines could not safely load heavy vehicles at Chandlers Cove

The preferred landing for solid waste removal and barging of large vehicles was Bennetts Cove for the following reasons:

1. Ability to accommodate large vehicles, too large for the Stone Wharf
2. Reduced congestion at the Stone Wharf
3. Proximity to Portland, thus reducing transportation costs

Example of a large vehicle recently landed at Bennetts Cove which would be unable to land at the Stone Wharf:



All other possible landing options are long-term solutions, possibly taking years, with development requiring a large investment on the part of the Town and its taxpayers.

CONCLUSION:

Bennetts Cove is not only the logical place for solid waste removal and barging of large vehicles, it is the only option currently open to the Town of Chebeague Island.

All efforts should be taken to minimize the impact on the Bennetts Cove neighborhood, including, but not limited to widening and paving Bennetts Cove Road and the limiting of loudly idling trucks.



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

May 1, 2024

Viktoria Wood
Town Administrator
192 North Road
Chebeague Island, ME 04017

Sent VIA EMAIL ONLY to townadmin@townofchebeagueisland.org

RE: Applicability of the Natural Resources Protection Act to barge landing activity at Bennett’s Cove

Dear Ms. Wood:

The Department of Environmental Protection (Department) has received complaints from residents of the Town of Chebeague Island pertaining to the regular Town-authorized barge landings that occur at Bennett’s Cove and the associated activity of vehicles loading materials onto the barge and taking materials off the barge. Department staff visited the site on December 20, 2023, and April 9, 2024.

The Natural Resources Protection Act (NRPA) requires a person to obtain a permit from the Department before performing certain activities located in, on or over any protected natural resource or adjacent to certain protected natural resources including coastal wetlands. Among the activities requiring a permit are “...removing or displacing soil, sand, vegetation or other materials...” and “...construction, repair or alteration of any permanent structure.” (38 M.R.S. §480-C(2)). Bennett’s Cove contains three protected natural resources: a coastal wetland, a coastal sand dune system and a significant wildlife habitat (Tidal Waterfowl and Wading Bird Habitat).

During visits to the site, Department staff witnessed some modest displacement of sand within these resources that appeared to be caused by barge landings and associated vehicular activity. Following the site visit on December 20, 2023, Department staff reported in a memo to the Town that:

“...much of the evidence from barging was challenging to see, particularly in the intertidal area. What could be observed was the sand displayed a clear, widened depression from the road to the low water line. No intertidal disturbances could be seen; no scarring, impact to rocks, or aquatic vegetation removal from boat activity.”

Subsequently, on my April 9, 2024, site visit, I witnessed some displacement of sand in the coastal sand dune system that appeared to be caused by trucks driving on the frontal dune. Town residents have also provided photographs to the Department showing rutting in the frontal dune from truck tires. Residents have further alleged that barging activity has disturbed or destroyed eelgrass in the subtidal area; however, Department staff have not been able to substantiate these claims.

The Town has requested guidance from the Department regarding whether the Town (or barge operator) must obtain a NRPA permit to continue barge landing activities at Bennett’s Cove. Landing barges and driving vehicles on beaches are not activities that are explicitly listed in the Department rules. Therefore, the Department must use professional judgement to interpret and apply the rules to determine whether a

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permit is required for the impacts of those activities present in this case, based on the language and intent of NRPA.

In this case,¹ the Department has determined that, while there is clear evidence that some displacement of sand has been occurring as a result of barge landing activities at Bennett's Cove, the scale and permanence of the displacement is not of a magnitude that will constitute a violation of the NRPA if the Town (or barge operator) does not obtain a permit to conduct the activity. Displacement of soil and sand occurs in, on, over and adjacent to protected natural resources from many activities performed by people throughout the state, and our interpretation is that it is not the intent of NRPA to require a permit for each small-scale, non-permanent displacement. Moreover, it would be administratively infeasible for the Department to process NRPA permit applications for each of these activities and pursue enforcement actions in cases where no permit was obtained. In this instance, the depression and rutting of sand is modest and, importantly, could be reversed with minor natural and human-initiated interventions. For example, the rutting caused by vehicles on the beach could be addressed by laying down temporary mats² to support the vehicles or by raking sand back into place after vehicles exit the beach. In addition, natural tidal cycles and storm events will move sand and rocks within the coastal wetland and sand dune system such that it is unlikely that the sand displacement that has occurred from barge landing activity at this site will persist over long periods of time or become permanent.

The Town has also requested guidance regarding permitting requirements for the possible construction of a permanent ramp or other structure to facilitate barge landings at Bennett's Cove. The Department is aware that the barge operator has suggested that the Town may file a Permit by Rule (PBR) application for approval of a public boat ramp under Ch. 305 §15 of the Department's rules. However, the Department has determined that it would not accept such a PBR application, for two reasons.

First, while the term "public boat ramp" is not defined in Ch. 305, the term is interpreted by the Department to be, and is commonly understood to be, a structure designed to support the launching of boats into the water by members of the public. This interpretation is supported by the regulation's Applicability subsection, A(2), where it states, "This section applies to the construction of up to 2 launch lanes at a facility..." and the Standards subsection, C(2), where it requires that, "A hard surface launch must be used where boats will be launched from trailers..." The Department does not consider a ramp designed to facilitate commercial barge landings, or to support vehicle activity associated with commercial barge landings, to be a public boat ramp as contemplated by Ch. 305 §15.

Second, even if Section 15 applied, the Department retains discretionary authority under Ch. 305 § 1(D) to require an individual permit application to be filed in any case where credible evidence indicates that the activity:

- (1) May violate the standards of Ch. 305 or NRPA (38 M.R.S. §480-D);
- (2) Could lead to significant environmental impacts, including cumulative impacts; or
- (3) Could adversely impact a resource of special concern.

The Department would have ample reason to rely on this authority to require a full NRPA permit application to be filed if it received a PBR application for a public boat ramp at Bennett's Cove. Any public boat ramp at this location that would support all-tide access for launching boats would need to be a

¹ The Department's determination is specific to the activities currently taking place at Bennett's Cove, as understood by Department staff based on evidence gathered on site and from town residents, and should not be generalized to other sites or activities.

² Construction of a temporary structure does not require a NRPA permit (38 M.R.S. §480-C(2)(D)). To be considered a temporary structure, the structure cannot remain in place for more than 7 months within any 12-month period (38 M.R.S. §480-B(7)).

long, substantial structure covering a large area of coastal sand dune system, coastal wetland and significant wildlife habitat. Alternatively, a shorter structure designed to facilitate launching boats and commercial barge landings around high tide in the frontal dune would be likely to result in significant scouring of sand as wave and tidal energy deflects off the ramp into the dune. In either case, the boat ramp could violate the standards of NRPA—such as 38 M.R.S. §480-D(7), which requires that if an “activity is on or adjacent to a sand dune, it will not unreasonably interfere with the natural supply or movement of sand or gravel within or to the sand dune system...”—and lead to significant environmental impacts. It is for this reason that the Department’s rules governing development in coastal sand dune systems, Ch. 355, significantly restrict new construction in frontal sand dunes.

Given that the Department will not accept a PBR application for a boat ramp at Bennett’s Cove, and since the Department’s Ch. 355 rules do not allow a new structure such as a boat ramp to be constructed on or seaward of a frontal dune (Ch. 355(6)(B)), a boat ramp could not be permitted at Bennett’s Cove at this time.

Please feel free to contact Department staff if you have questions about the possible use of temporary mats. If you have any other questions, please do not hesitate to contact me at robert.wood@maine.gov or (207) 855-8361.

Sincerely,



Rob Wood
Director, Bureau of Land Resources