



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI  
GOVERNOR

DAVID P. LITTELL  
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection  
FROM: Chris Coppi, Bureau of Land and Water Quality  
RE: Consent Agreement for Donald Holdsworth and Thomas Tardiff  
DATE: January 7, 2010

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**Statute and Rule Reference:** The *Natural Resources Protection Act*, 38 M.R.S. Section 480-C, prohibits, in pertinent part, constructing a permanent structure in the frontal dune of a coastal sand dune system without first obtaining a permit from the Department.

**Location:** Wells

**Description:** In December 2007, a staff inspection of Donald Holdsworth's property revealed that Thomas Tardiff, as an agent for Donald Holdsworth, re constructed a barrier fence approximately 128 feet long in the frontal dune. During re construction, the fence height was increased from 2.5 feet to 4 feet high. Further investigation revealed that the fence was first constructed in the mid-1990s without a Department permit. Neither Thomas Tardiff nor Donald Holdsworth first obtained a permit from the Department for the structure.

**Environmental Issues:** Coastal sand dune systems are fragile, dynamic resources that comprise only about two percent of Maine's overall coastline. These sandy stretches are considered resources of state significance since they act as natural barriers that protect the shoreline from storm events. They also provide vital habitat for a variety of wildlife including migratory shorebirds. Closed fences restrict and redirect the natural flow of water and sand through the dunes which may impact these habitat areas. Extensive development of sand dune areas and the construction of structures increase the risk of harm, to both the coastal sand dune system and the structure themselves.

Donald Holdsworth removed the horizontal members of the fence, both above and below grade, to staff's satisfaction. The vertical posts were allowed to remain in place because the fence now qualifies as an open fence under Chapter 355. Open fences, which include split rail fences, are allowed to be constructed in the frontal dunes because they allow for the free movement of wind, water, and sand. Donald Holdsworth also stabilized the area seaward of the fence to an existing concrete seawall with beach grass as agreed upon in the Consent Agreement. Staff will monitor the beach grass in the restoration area for reasonable success in the following growing season.

**Department Recommendation:** The Department recommends acceptance of this Consent Agreement stipulating a monetary penalty of \$2,452.00, which has been paid. The Agreement also required that all but the vertical posts of the barrier fence be removed and the area seaward of the fence be planted with beach grass, which has been done.

The penalty is based on the Department's penalty policy and reflects that the violation was foreseeable and the length of time taken to bring the project into compliance.

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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
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IN THE MATTER OF:

DONALD HOLDSWORTH
WELLS, YORK, MAINE
and
THOMAS TARDIFF
WELLS, YORK, MAINE
NRPA
2008-009-L
ADMINISTRATIVE CONSENT
AGREEMENT
(38 M.R.S.A § 347-A)

This Agreement by and among Donald Holdsworth, Thomas Tardiff, the Maine Department of Environmental Protection ("Department"), and the Maine Office of the Attorney General is entered into pursuant to the laws concerning the Department's Organization and Powers, 38 M.R.S.A. § 347-A(1).

The parties agree as follows:

- 1. Donald Holdsworth owns a parcel of land on Island Beach Road in Wells, Maine as described and recorded in Book 8120 on Page 211 of the York County Registry of Deeds.
2. The property described in Paragraph 1 of this Agreement is located in a frontal dune which is part of the coastal sand dune system as defined by the Natural Resources Protection Act, 38 M.R.S.A. § 480-B(1).
3. On December 27, 2007, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that Thomas Tardiff, as agent for Donald Holdsworth, replaced a barrier fence approximately 128 feet long and 2.5 feet high. The replacement resulted in an expansion of the front portion of the barrier fence to 4 feet in height. Further investigation by staff revealed that the replaced barrier fence was originally built in the mid-1990s without first obtaining a permit from the Department. Neither Thomas Tardiff nor Donald Holdsworth first obtained a permit from the Department for either the replaced barrier fence or the original barrier fence.
4. By constructing or causing to be constructed a permanent structure, namely a barrier fence, in a coastal sand dune system without first obtaining a permit from the Department, Donald Holdsworth and Thomas Tardiff violated the Natural Resources Protection Act, 38 M.R.S.A. § 480-C.

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IN THE MATTER OF:

DONALD HOLDSWORTH, <i>ET AL</i>	)	ADMINISTRATIVE CONSENT
WELLS, YORK, MAINE	)	AGREEMENT
NRPA	)	(38 M.R.S.A. § 347-A)
2008-009-L	)	
	)	

5. On January 18, 2008, the Department issued a Notice of Violation to Donald Holdsworth and Thomas Tardiff regarding the violations described in Paragraphs 3 and 4 of this Agreement.
6. The Department has regulatory authority over the activities described herein.
7. Pursuant to 38 M.R.S.A. § 341-D(6)(C) and 347-A(1)(A)(1), administrative consent agreements must be approved by the Board of Environmental Protection (the "Board") which is part of the Department.
8. This Agreement shall become effective only if it is approved by the Board and the Attorney General.
9. To resolve the violations referred to in Paragraphs 3 and 4 of this Agreement, Donald Holdsworth agrees to:
  - A. No later than September 30, 2009, remove the above grade infrastructure of the entire fence with the exception of the vertical posts to staff satisfaction.
  - B. No later than October 30, 2009, remove the below grade infrastructure of the entire fence and restore the dune seaward of the fence with beach grass consistent with restoration standards under Chapter 305 Department Rules. No later than June 2010, monitor the restored area for success and to staff satisfaction.
  - C. Pay to the Treasurer, State of Maine, upon demand by the Department, the sum of one hundred dollars (\$100.00) per day per violation for the violation of any provision of this consent agreement.
10. To resolve the violations referred to in Paragraphs 3 and 4 of this Agreement, Donald Holdsworth and Thomas Tardiff agree to pay the Treasurer, State of Maine, upon signing this Agreement, the sum of two thousand four hundred fifty two dollars (\$2,452.00) as a civil monetary penalty.
11. The Department and Office of the Attorney General grant a release of their causes of action against Donald Holdsworth and Thomas Tardiff for the specific violations listed in Paragraphs 3 and 4 of this Agreement on the express condition that all actions listed in Paragraphs 9 and 10 of this Agreement, as applicable, are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective until this condition is satisfied.

IN THE MATTER OF:

DONALD HOLDSWORTH, *ET AL* ) ADMINISTRATIVE CONSENT  
WELLS, YORK, MAINE ) AGREEMENT  
NRPA ) (38 M.R.S.A. § 347-A)  
2008-009-L )  
)

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three (3) pages.

DONALD HOLDSWORTH

*Donald E. Holdsworth*

DATE: 9/18/09

DONALD HOLDSWORTH

THOMAS TARDIFF

*Thomas Tardiff*

DATE: 9/18/09

THOMAS TARDIFF

MAINE BOARD OF ENVIRONMENTAL PROTECTION

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

SUSAN M. LESSARD, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL