



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

BETH NAGUSKY
ACTING COMMISSIONER

IN THE MATTER OF:

JAMES GROSS, JR. & CHERYL GROSS) ADMINISTRATIVE CONSENT
PENOBSCOT, HANCOCK, MAINE) AGREEMENT
NRPA, E&S, § 413) (38 M.R.S.A. § 347-A)
2010-056-L)

This Agreement by and among James Gross, Jr. and Shari Gross ("the Grosses"), 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. The Grosses, 268 Bay View Road, Penobscot, Maine 04476, own a parcel of land on Lakeview Road in Penobscot, Maine as described and recorded in Book 5305 on Page 228 of the Hancock County Registry of Deeds.
2. The property described in Paragraph 1 of this Agreement is adjacent to Toddy Pond which is a great pond as defined by the Natural Resources Protection Act, 38 M.R.S.A. § 480-B(5). The property described in Paragraph 1 of this Agreement contains a freshwater wetland as defined by the Natural Resources Protection Act, 38 M.R.S.A. § 480-B(4). Toddy Pond and the freshwater wetland are protected natural resources pursuant to 38 M.R.S.A. § 480-B(8). Toddy Pond and the freshwater wetland are waters of the State as defined by the Protection and Improvement of Waters law, 38 M.R.S.A. § 361-A(7).
3. On April 22, 2010, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that the Grosses disturbed soil, placed earthen material and removed vegetation immediately adjacent to Toddy Pond in an area approximately 41,000 square feet in size. In addition, the Grosses placed sand in and adjacent to Toddy Pond in an area measuring approximately 2,375 square feet in size of which approximately 190 square feet occurred below the normal high water line of Toddy Pond. Furthermore, the Grosses disturbed soil and/or placed fill in the freshwater wetland altering approximately 1,000 square feet in size. The freshwater wetland is located within 250 feet of Toddy Pond, therefore it is a Wetland of Special Significance and any alteration requires a permit. The Grosses did not first obtain a permit from the Department for these activities. No erosion controls were observed on site, with the exception of some shrubs that were planted adjacent to the shoreline in an area that was mulched with bark measuring approximately 400 square feet in size.
4. The activities described in Paragraph 3 of this Agreement constitute the following violations:

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826
RAY BLDG., HOSPITAL ST.

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04679-2094
(207) 764-0477 FAX: (207) 760-3143

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- A. By filling, bulldozing or otherwise disturbing soil in and adjacent to a great pond and a freshwater wetland without first obtaining a permit from the Department, the Grosses violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
 - B. By discharging pollutants, namely sand and soil, to waters of the state without first obtaining a permit from the Department, the Grosses violated the *Protection and Improvement of Waters* law, 38 M.R.S.A. § 413.
 - C. By conducting or causing to be conducted an activity that involves filling, displacing or exposing soil or other earthen materials without taking measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resources, the Grosses violated the *Erosion and Sedimentation Control* law, 38 M.R.S.A. § 420-C.
5. On April 27, 2010, the Department issued a Notice of Violation to the Grosses regarding the violations described in Paragraphs 3 and 4 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
 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 Office of the Attorney General.
 9. To resolve the violations referred to in Paragraphs 3 and 4 of this Agreement, the Grosses agree to:
 - A. No later than October 1, 2010, submit a restoration plan to the Department to remove all of the fill that was placed in Toddy Pond, within 75 feet of Toddy Pond, and in the freshwater wetland. The plan must also provide for replacement of all the vegetation that was removed with native trees and shrubs: the trees must be at least 20 feet tall and the shrubs must be at least 2 feet tall. The plan must also include restoring uneven topography, provide for temporary erosion control, and the replacement of any vegetation that dies within the first five years of planting. The restoration plan is subject to review and approval by Department staff and must include a specific time schedule for the completion of all phases of the restoration. Implement the approved plan in accordance with the schedule contained therein.
 - B. 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 Agreement.

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C. Pay the Treasurer, State of Maine, upon signing this Agreement, the sum of Ten Thousand dollars (\$10,000.00) as a civil monetary penalty.

10. The Department and the Office of the Attorney General grant a release of their causes of action against the Grosses for the specific violations listed in Paragraphs 3 and 4 of this Agreement on the express condition that all actions listed in Paragraph 9 of this Agreement 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 WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three (3) pages.

JAMES GROSS, JR.

James Gross Jr. DATE: 9-25-10

CHERYL GROSS

Cheryl Gross DATE: 09/24/10

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____ DATE: _____
SUSAN M. LESSARD, CHAIR

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: _____ DATE: _____
AMY B. MILLS, ASSISTANT ATTORNEY GENERAL