

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS
GOVERNOR

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State of Maine

JAN 13 2020

Dept of Envir Protection
Northern ME Regional Office



GERALD D. REID
COMMISSIONER

IN THE MATTER OF

DANIEL DELUCCA)	ADMINISTRATIVE CONSENT
HOULTON, AROOSTOOK COUNTY)	AGREEMENT
NATURAL RESOURCES PROTECTION ACT)	(38 M.R.S. § 347-A)
EROSION & SEDIMENTATION CONTROL LAW)	
STORMWATER MANAGEMENT LAW)	
2019-057-L)	

This Agreement, by and among Daniel Delucca, and the State of Maine, Department of the Attorney General ("AG"), and Department of Environmental Protection ("Department"), as approved by the Maine Board of Environmental Protection ("Board"), is entered into pursuant to the laws concerning the Department's *Organization and Powers*, 38 M.R.S. §§ 347-A(1) and 341-D(6).

THE PARTIES AGREE AS FOLLOWS:

1. Daniel Delucca ("Delucca") is an individual whose address is 428 North Street, Houlton, ME, 04730.
2. Delucca owns a parcel of land at 188 Ludlow Road in Houlton, Maine identified as Map 27, Lot 32 on the Town of Houlton tax maps and more specifically described in a deed recorded in Book 5137, Page 165 of the Southern Aroostook Registry of Deeds (Property).
3. The Property includes a forested freshwater wetland as defined by the Natural Resources Protection Act ("NRPA"), 38 M.R.S. § 480-B(2-C). Freshwater wetlands are protected natural resources pursuant to the NRPA, 38 M.R.S. § 480-B(8).
4. On May 22, 2019, Department staff observed that vegetation had been removed from the forested wetland and approximately 50,000 square feet of fill had been placed within the wetland area. Staff also observed that approximately 3.75 acres had been disturbed and that there were no erosion and sedimentation controls in use on the site at the time of the visit. After further investigation, it was determined that Delucca had not obtained any permits from the Department for any of the observed activities.
5. Throughout the period of time addressed by this agreement, Delucca was subject to the following statutory requirements:

A. NRPA, 38 M.R.S. § 480-C.

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

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 04769
(207) 764-0477 FAX: (207) 760-3143

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“Prohibition. A person may not perform or cause to be performed any activity listed in subsection 2 without first obtaining a permit from the department if the activity is located in, on or over any protected natural resource or is located adjacent to any of the following:

A. A coastal wetland, great pond, river, stream or brook or significant wildlife habitat contained within a freshwater wetland; or

B. Freshwater wetlands consisting of or containing:

(1) Under normal circumstances, at least 20,000 square feet of aquatic vegetation, emergent marsh vegetation or open water, except for artificial ponds or impoundments; or

(2) Peatlands dominated by shrubs, sedges and sphagnum moss.”

B. The *Erosion and Sedimentation Control Law*, 38 M.R.S. § 420-C.

“A person who conducts, or causes to be conducted, an activity that involves filling, displacing or exposing soil or other earthen materials shall take measures to prevent unreasonable erosion of soil or sediment beyond the project site or into a protected natural resource as defined in section 480-B. Erosion control measures must be in place before the activity begins. Measures must remain in place and functional until the site is permanently stabilized. Adequate and timely temporary and permanent stabilization measures must be taken and the site must be maintained to prevent unreasonable erosion and sedimentation.”

C. *Stormwater Management Law* 38 M.R.S. § 420-D:

“A person may not construct, or cause to be constructed, a project that includes one acre or more of disturbed area without prior approval from the department. A person proposing a project shall apply to the department for a permit using an application provided by the department and may not begin construction until approval is received. This section applies to a project or any portion of a project that is located within an organized area of this State.”

6. The activities described in Paragraph 4 of this Agreement constitute the following violations:

A. By dredging, filling, and displacing soil and vegetation in a freshwater wetland

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without first obtaining a permit from the Department, Delucca violated the NRPA, 38 M.R.S.A § 480-C.

- B. By conducting an activity that involves filling, displacing or exposing soil or other earthen material without first taking measures to prevent unreasonable erosion of soil or sediment beyond the project site or into the protected natural resources, Delucca violated the *Erosion and Sedimentation Control Law*, 38 M.R.S. § 420-C.
- C. By constructing, or causing to be constructed, a project that includes one or more acres of disturbed area without first obtaining a permit from the Department, Delucca violated the *Stormwater Management Law*, 38 M.R.S. § 420-D.
7. On June 21, 2019, the Department issued a Notice of Violation (“NOV”) to Delucca for the activities described in Paragraphs 4 and 6 of this Agreement, in accordance with 38 M.R.S. § 347-A(1)(B). The NOV required corrective actions including the immediate installation of erosion and sedimentation control measures, the submittal of after-the-fact applications for both *Natural Resources Protection Act* and *Stormwater Management Law* permits within 60 days of receipt of the NOV, or the submission of a restoration plan within 14 days of receipt of the NOV.
 8. On July 18, 2019, the Department received and approved a restoration plan submitted by Delucca as required by the NOV. Delucca began restoration of the site immediately and the site was restored to the Department’s satisfaction by August 6, 2019.
 9. The Department has regulatory authority over the activities described herein.
 10. This Agreement shall become effective only if it is approved by the Board and the AG.
 11. To resolve the violations referred to in Paragraphs 4 and 6 of this Agreement, Delucca agrees to pay to the *Treasurer, State of Maine*, immediately upon signing this Agreement, a civil monetary penalty in the amount of three thousand four hundred and one dollars (\$3,401.00).
 12. The Department and AG grant a release of their causes of action against Delucca for the specific violations listed in Paragraphs 4 and 6 of this Agreement on the express condition that all actions listed in Paragraph 11 of this Agreement are completed in accordance with the express terms and conditions of this Agreement to the satisfaction of the Department and the AG. The release shall not become effective until all requirements of this Agreement are satisfied.

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IN THE MATTER OF

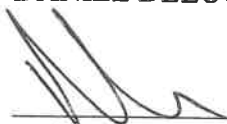
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AGREEMENT
(38 M.R.S. § 347-A)

- 13. Non-compliance with this Agreement voids the release set forth in Paragraph 12 of this Agreement and may lead to an enforcement action pursuant to 38 M.R.S. §§ 347-A(1)(A), 347-A(5), or 348, as well as pursuit of other remedies.
- 14. Actions taken pursuant to this Agreement shall be completed in accordance with the requirements of all applicable local, state, and federal laws, rules, and orders including but not limited to licensing requirements.
- 15. The provisions of this Agreement shall apply to, and be binding on, the parties and their officers, agents, servants, employees, successors, and assigns, and upon those persons in active concert or participation with them who receive actual notice of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of four (4) pages:

DANIEL DELUCCA



DATE: 11/9/2020

DANIEL DELUCCA

MAINE BOARD OF ENVIRONMENTAL PROTECTION

BY: _____ DATE: _____

MARK C. DRAPER, CHAIR

MAINE DEPARTMENT OF THE ATTORNEY GENERAL

BY: _____ DATE: _____

KATHERINE TIERNEY, ASSISTANT ATTORNEY GENERAL