



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

JOHN ELIAS BALDACCI
GOVERNOR

DAVID P. LITTELL
COMMISSIONER

MEMORANDUM

TO: The Board of Environmental Protection
FROM: Colin A. Clark, Bureau of Land & Water Quality, Augusta
RE: Consent Agreement for Last Resort Holdings, LLC.
DATE: May 20, 2010

Statute and Rule Reference: *The Site Location of Development Act* (Site Law), 38 M.R.S.A. § 484-A, state, in pertinent part, that any variation from the plans, proposals and supporting documents is subject to review and approval of the Board prior to implementation.

Location: Cushing, Maine

Description: On July 10, September 18, October 10, and November 30, 2007 an inspection of the property owned by Last Resort Holdings, LLC. by Department staff revealed that fly rock from blasting during the construction of the access road to Lot 26 was not contained in accordance to the plans submitted with the License application. Last Resort Holdings, LLC. did not first obtained a permit from the Department for this activities. At the time of inspection, no erosion control devices were installed along the roads to Lot 26.

Environmental Issues: Water quality in a coastal wetland can be affected by large disturbed, non-vegetated areas without properly installed controls to prevent material from entering the coastal wetland. These sites may discharge soil, rock and other materials into the coastal wetland which can result in the destruction of intertidal marine habitat. Many marine organisms depend on the use of intertidal area for a portion of their life cycle.

In this case, the material was removed from the coastal wetland and areas immediately adjacent: no long term impact is expected.

Department Recommendation: The Department recommends acceptance of this Consent Agreement stipulating that Last Resort Holdings, LLC. pay a monetary penalty of \$5,670.00, which has been paid. The penalty is based on the Department's penalty policy reflecting the size of the violation, knowledge of the violator, and that the violation could have been avoided.

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STATE OF MAINE
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DAVID P. LITTELL
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IN THE MATTER OF:

LAST RESORT HOLDINGS, LLC) ADMINISTRATIVE CONSENT
BANGOR, PENOBSCOT, MAINE) AGREEMENT
SITE) (38 M.R.S.A. § 347-A)
2007-225-L)

This Agreement, by and among Last Resort Holdings, LLC, 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. Last Resort Holdings, LLC owned a parcel of land on Pleasant Point Road in Cushing, Maine as described and recorded in Book 3610 on Page 125 of the Knox County Registry of Deeds.
2. Last Resort Holdings, LLC, 100 Dowd Park, Bangor, Maine 04401, is a Maine limited liability company authorized to conduct business in Maine and which is developing the property described in Paragraph 1 of this agreement. James Tower is the Managing Member of Last Resort Holdings, LLC.
3. The property described in Paragraph 1 of this Agreement is adjacent to a coastal wetland as defined by the Natural Resources Protection Act, 38 M.R.S.A. § 480-B(2).
4. On March 17, 2006, the Department granted approval to Last Resort Holdings, LLC in Department Order #L-21920-L3-I-C to install a road to lot 26 in the Meduncook Bay Colony on the property described in Paragraph 1 of this Agreement subject to a series of standard and special conditions as follows:
A. Standard Condition 1 of the Standard Conditions of Approval for Department Order #L-21920-L3-I-C states: This approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from the plans, proposals and supporting documents is subject to the review and approval of the Board prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited, without prior approval by the Board of Environmental Protection, and the applicant shall include deed restrictions to this effect.
5. On July 10, September 18, October 10, and November 30, 2007, inspections of the property described in Paragraph 1 of this Agreement by Department staff revealed that during the construction of the access road to Lot 26 fly rock from blasting was not contained by blasting

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mats or other protective devices in accordance with the plans submitted with the application. As a result, a large quantity of flyrock was discharged into wooded buffers adjacent to the coastal wetland and some entered the coastal wetland. Last Resort Holdings, LLC did not first obtain a permit from the Department for this activity. At the time of inspection, no erosion control devices were installed along the road to Lot 26 contrary to the erosion control plan submitted and approved in Department Order #L-21920-L3-I-C.

6. By failing to follow the plans submitted and approved in Department Order #L-21920-L3-I-C, Last Resort Holdings, LLC violated Standard Condition #1 of Department Order #L-21920-L3-I-C and the *Site Location of Development Law*, 38 M.R.S.A. § 483-A.
7. On November 30, 2007, the Department issued a Notice of Violation to Last Resort Holdings, LLC regarding the violations described in Paragraphs 5 and 6 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
8. On December 26, 2007, Last Resort Holdings, LLC submitted a restoration plan to the Department to clean up the fly rock from the coastal wetland and adjacent wooded areas. The restoration plan, prepared by Jake Barbour Inc., is entitled "Gaunt Neck" and is dated December 18, 2007. The plan was approved by staff and all restoration has been completed in accordance with this plan.
9. The Department has regulatory authority over the activities described herein.
10. 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.
11. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
12. To resolve the violations referred to in Paragraphs 5 and 6 of this Agreement, Last Resort Holdings, LLC agrees to pay the Treasurer, State of Maine, upon signing this Agreement, the sum of five thousand six hundred seventy dollars (\$5,670.00) as a civil monetary penalty.
13. The Department and the Office of the Attorney General grant a release of their causes of action against Last Resort Holdings, LLC for the specific violations listed in Paragraphs 5 and 6 of this Agreement on the express condition that all actions listed in Paragraph 12 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.

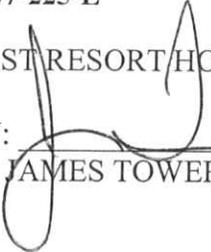
IN WITNESS WHEREOF the parties hereto have executed this Agreement consisting of three (3) pages.

IN THE MATTER OF:

LAST RESORT HOLDINGS, LLC
BANGOR, PENOBSCOT, MAINE
SITE
2007-225-L

) ADMINISTRATIVE CONSENT
) AGREEMENT
) (38 M.R.S.A. § 347-A)
)

LAST RESORT HOLDINGS, LLC.

BY: 
JAMES TOWER, MANAGING MEMBER

DATE: 3/23/10

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____
SUSAN LESSARD, CHAIR

DATE: _____

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: _____
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL

DATE: _____