



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

DARRYL N. BROWN
COMMISSIONER

MEMORANDUM

TO: Board of Environmental Protection
FROM: John Maclaine, Bureau of Land & Water Quality, Southern Maine Regional Office
RE: Consent Agreement for Kathleen Littlefield and The Modular Advantage
DATE: April 21, 2011

Statute and Rule Reference: *The Natural Resources Protection Act*, 38 M.R.S.A. § 480-C, prohibits soil disturbance in and adjacent to a coastal wetland and in a Wetland of Special Significance without first obtaining a permit from the Department. It also prohibits a person from acting contrary to the terms or conditions of a permit.

The Erosion and Sedimentation Control Law, 38 M.R.S.A. § 420-C, states, in pertinent part, that 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.

Location: Harpswell

Description: On May 12, 2009, an inspection of the property by Department staff at 16 Aucocisco Lane in Harpswell revealed that The Modular Advantage, as agent for Kathleen Littlefield, had altered freshwater wetlands located less than 250 feet from a coastal wetland, considered to be a wetland of special significance. Approximately 1,409 square feet of freshwater wetlands on the property had been altered by removing vegetation, placing fill in order to access the lot, and installing a culvert under fill in the freshwater wetland and within 75 feet of the coastal wetland to divert run-off from the freshwater wetland to the New Meadows River. Neither Kathleen Littlefield nor The Modular Advantage first obtained a permit from the Department for these activities.

On September 29, 2009, Kathleen Littlefield submitted an after-the-fact permit application for 1,088 square feet of wetland fill for the installation of a driveway to access the upland portion of the lot. The application also included a restoration plan for remainder of the altered wetlands. The after-the-fact application was assigned #L-24732-TA-A-N and was approved by the Department on November 10, 2009.

On December 17, 2009, an inspection of the property by Department staff revealed that plans submitted to the Department with the application for Department Order #L-24732-TA-A-N had not been followed, and additional unpermitted fill had been placed in freshwater wetlands on the property. Staff also documented that the Erosion and Sedimentation Control plans approved in Department Order #L-24732-TA-A-N had not been followed, resulting in some movement of sediment onto an abutting property and into the freshwater wetlands on the site. Erosion control measures that had been installed were not installed correctly.

Environmental Issues: Freshwater wetlands are often noted for their ability to absorb and purify storm water runoff, as well as provide unique wildlife habitat. Removing vegetation and disturbing soil in and

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adjacent to a wetland exposes soil such that it is in position to wash into the wetland or other protected natural resources.

Department Recommendation: The Department recommends acceptance of this Consent Agreement stipulating that Kathleen Littlefield and The Modular Advantage pay a monetary penalty of \$4,234.00, which has been paid. Restoration of the affected wetlands has been started and will be completed and monitored in the spring/summer of 2011. The site is currently stable through permanent and temporary erosion control measures. 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.

This Administrative Consent Agreement was signed by Kathleen Littlefield and Gerald Douglass of The Modular Advantage on May 31, 2010; however, the payment of the penalty was not received by the Department until February 25, 2011.



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

COPY

JOHN ELIAS BALDACCIO
GOVERNOR

IN THE MATTER OF:

DAVID P. LITTELL
COMMISSIONER

KATHLEEN LITTLEFIELD AND) ADMINISTRATIVE
THE MODULAR ADVANTAGE) CONSENT
HARPSWELL, CUMBERLAND, MAINE) AGREEMENT
NRPA, E&S) (38 M.R.S.A. § 347-A)
2009-136-L)

This Agreement by and among Kathleen Littlefield, The Modular Advantage, 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. § 347-A(1).

The parties agree as follows:

- 1. Kathleen Littlefield, 16 Aucocisco Lane, Harpswell, Maine, owns a parcel of land at 12 Aucocisco Lane in Harpswell, Maine as described and recorded in Book 17879 on Page 209 of the Cumberland County Registry of Deeds.
2. The Modular Advantage, a Maine corporation with a mailing address of 105 Farley Road, Brunswick, Maine, is the general contractor for Kathleen Littlefield on the property described in paragraph 1 of this Agreement. Gerald O. Douglass is President of The Modular Advantage.
3. The property described in Paragraph 1 of this Agreement contains a portion of a freshwater wetland as defined by the Natural Resources Protection Act, 38 M.R.S.A. § 480-B(4), and is adjacent to the New Meadows River, which is a coastal wetland as defined by the Natural Resources Protection Act, 38 M.R.S.A. § 480-B(2). Coastal wetlands and freshwater wetlands are protected natural resources pursuant to 38 M.R.S.A. § 480-B(8).
4. On May 12, 2009, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that The Modular Advantage, as agent for Kathleen Littlefield, had altered freshwater wetlands located less than 250 feet from a coastal wetland. Approximately 1,409 square feet of freshwater wetlands on the property had been altered by removing vegetation, placing fill in order to access the lot, and installing a culvert under fill in the freshwater wetland and within 75 feet of the coastal wetland to divert run-off from the freshwater wetland to the New Meadows River. Neither Kathleen Littlefield nor The Modular Advantage first obtained a permit from the Department for these activities. At the time of inspection, erosion control measures were in place.
5. By disturbing soil and filling, or causing soil to be disturbed and causing filling, in a freshwater wetland and adjacent to a coastal wetland without first obtaining a permit from the Department, Kathleen Littlefield and The Modular Advantage violated the Natural Resources Protection Act, 38 M.R.S.A. § 480-C.

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THE MODULAR ADVANTAGE)	CONSENT
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6. On September 29, 2009, Kathleen Littlefield submitted an after-the-fact permit application for 1,088 square feet of wetland fill for the installation of a driveway to access the upland portion of the lot described in Paragraph 1 of this Agreement. The application proposed a restoration plan to remove fill and the culvert from the wetland and restore the remainder of the 1,409 square feet of disturbed freshwater wetlands on the property. The restoration plan, prepared by Albert Frick Associates, is entitled "Wetland Restoration Plan N/F Littlefield" and is dated June 4, 2009, with a latest revision date of September 15, 2009. The after-the-fact application was assigned #L-24732-TA-A-N and was approved by the Department on November 10, 2009 subject to a series of standard and special conditions as follows:
 - A. Standard Condition A of the Standard Conditions of Approval for Department Order #L-24732-TA-A-N states in pertinent part: "The granting of this permit 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 these plans, proposals, and supporting documents is subject to review and approval prior to implementation."
 - B. Standard Condition C of the Standard Conditions of Approval for Department Order #L-24732-TA-A-N states in pertinent part: "The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval."
 - C. Special Conditions: The applicant shall commence the restoration plan for the wetlands, including removal of fill, installation of the culvert under the driveway and removal of the existing 276 feet of culvert on the north side of the lot, by May 1, 2010. The applicant shall finish implementing the wetlands restoration plan, including all loaming, seeding, planting, and mulching, by June 1, 2010.
7. On December 17, 2009, an inspection of the property described in Paragraph 1 of this Agreement by Department staff revealed that plans submitted to the Department with permit #L-24732-TA-A-N had not been followed and additional, unpermitted fill had been placed in freshwater wetlands on the property. Staff also documented that the Erosion and Sedimentation Control plans approved in Department Order #L-24732-TA-A-N had not been followed, resulting in some movement of sediment onto an abutting property. Erosion control measures that had been installed were not installed correctly.
8. The activities described in Paragraph 7 of this Agreement constitute the following violations:
 - A. By placing fill or causing fill to be placed in a freshwater wetland without first obtaining a permit from the Department, Kathleen Littlefield and The Modular Advantage violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.

IN THE MATTER OF:

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THE MODULAR ADVANTAGE)	CONSENT
HARPSWELL, CUMBERLAND, MAINE)	AGREEMENT
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2009-136-L)	

- B. By failing to follow the plans submitted and approved in Department Order #L-24732-TA-A-N, Kathleen Littlefield violated Standard Condition A of Department Order #L-24732-TA-A-N and Kathleen Littlefield and The Modular Advantage violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
 - C. By failing to take all necessary measures to prevent the erosion of soil as approved in Department Order #L-24732-TA-A-N, Kathleen Littlefield violated Standard Condition C of Department Order #L-24732-TA-A-N and Kathleen Littlefield and The Modular Advantage violated the *Natural Resources Protection Act*, 38 M.R.S.A. § 480-C.
 - D. 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 resource, Kathleen Littlefield and The Modular Advantage violated *the Erosion and Sedimentation Control Law*, 38 M.R.S.A. § 420-C.
- 9. On December 29, 2009, the Department issued a Notice of Violation to Kathleen Littlefield and The Modular Advantage regarding the violations described in Paragraphs 4, 5, 7 and 8 of this Agreement in accordance with 38 M.R.S.A. § 347-A(1)(B).
 - 10. The Department has regulatory authority over the activities described herein.
 - 11. 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.
 - 12. This Agreement shall become effective only if it is approved by the Board and the Office of the Attorney General.
 - 13. To resolve the violations referred to in Paragraphs 4, 5, 7 and 8 of this Agreement, Kathleen Littlefield agrees to:
 - A. Implement the restoration plan included with the application for Department Order #L-24732-TA-A-N prepared by Albert Frick Associates entitled "Wetland Restoration Plan N/F Littlefield" in accordance with the requirements of Department Order #L-24732-TA-A-N. In addition, all additional unpermitted fill described in Paragraph 6 of this Agreement shall be removed and the area restored in the same manner and by the same date as the wetland provided for in the wetland restoration plan.

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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.

14. To resolve the violations referred to in Paragraphs 4, 5, 7 and 8 of this Agreement, Kathleen Littlefield and The Modular Advantage agree to pay the Treasurer, State of Maine, upon signing this Agreement, the sum of Four Thousand Two Hundred Thirty-Four dollars (\$4,234.00) as a civil monetary penalty.

15. The Department and the Office of the Attorney General grant a release of their causes of action against Kathleen Littlefield and The Modular Advantage for the specific violations listed in Paragraphs 4, 5, 7 and 8 of this Agreement on the express condition that the actions listed in Paragraph 13 and 14 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 WITNESS WHEREOF the parties hereto have executed this Agreement consisting of FOUR (4) pages.

KATHLEEN LITTLEFIELD

Kathleen Littlefield
KATHLEEN LITTLEFIELD, OWNER

DATE: 5/31/10

THE MODULAR ADVANTAGE

Gerald O. Bouglass
GERALD O. BOUGLASS, PRESIDENT

DATE: 5/31/10

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____
SUSAN M. LESSARD, CHAIR

DATE: _____

MAINE OFFICE OF THE ATTORNEY GENERAL

BY: _____
MARGARET A. BENSINGER, ASSISTANT ATTORNEY GENERAL

DATE: _____