

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF: AARON VORTHMANN	ADMINISTRATIVE CONSENT ORDER 2016-SL- 01
---	---

TO: Aaron Vorthmann
50459 370th St
Henderson, IA 51541-4067

I. SUMMARY

The Iowa Department of Natural Resources (Department) and Aaron Vorthmann hereby agree to the following Administrative Consent Order (Order). Aaron Vorthmann agrees to obtain a Sovereign Lands Construction Permit, remove woody debris from the site, and provide the Department with a permanent access easement to facilitate site restoration and management. See Sections IV and V for more details.

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Matt Dollison
Iowa Department of Natural Resources
503 West St., PO Box 490
Sidney, Iowa 51652
Ph: 712/374-3133
matt.dollison@dnr.iowa.gov

Relating to legal requirements:

Aaron Brees, Attorney
Iowa Department of Natural Resources
502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/725-8250
aaron.brees@dnr.iowa.gov

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 461A.4 and 571 Iowa Administrative Code (IAC) 13.15(2)"b" which authorize the Director of the Department to issue an order to secure compliance with Iowa Code chapter 461A and Department rules contained in chapter 571 Iowa Administrative Code (IAC) 13. Iowa Code 461A.5B

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
AARON VORTHMANN

and 571 IAC 13.17 authorize the Director to assess administrative penalties of up to \$5,000 for each day that a violation is ongoing.

III. STATEMENT OF FACTS

The Department and Aaron Vorthmann hereby agree to the following statement of facts:

1. On or around January 4, 2016, Matt Dollison, the Department's Wildlife Biologist for the Nishnabotna Unit, was contacted by Leo Rieken about the possibility of replacing and widening a culvert on an access road through Willow Slough Wildlife Management Area (WMA). Mr. Rieken is a contractor who does work for Aaron Vorthmann, the owner of the land adjacent to the WMA.
2. Mr. Dollison contacted Mr. Vorthmann to arrange a site visit to discuss options for replacing the culvert. Mr. Dollison, Mr. Vorthmann, and Mr. Rieken met at the site on January 22, 2016.
3. Following the meeting, Mr. Dollison took a walk to inspect the nearby property boundary signs. While doing so, he noticed that a 1.4 acre area of the WMA across the West Nishnabotna River, adjacent to a piece of Mr. Vorthmann's recently cleared land, had also been cleared.
4. Mr. Vorthmann was still present at the site and Mr. Dollison informed him that he believed part of the WMA had been cleared and that he would be in contact once he determined how to proceed with addressing the issue.
5. After confirming that part of the WMA had been cleared, Mr. Dollison contacted Mr. Vorthmann to arrange access to the property. The cleared piece of property is disjunct from the majority of the WMA property due to the movement of the river channel over time. It is currently bordered by the West Nishnabotna River on the east and south sides, and the only land access is by crossing Mr. Vorthmann's property which borders it on the west and north sides.
6. On February 1, 2016, Department District Forester Lindsey Barney and Mr. Dollison met Mr. Vorthmann at his home and then travelled to the cleared area. It was determined that while clearing his adjacent property, Mr. Vorthmann had also cleared the WMA property under the belief that it was a part of his property.
7. While on site, Ms. Barney conducted an evaluation of the trees that were cleared from the WMA. Her findings are summarized in her Timber Removal Report. Due to the thoroughness of the clearing activity, determination of size, number, and species present on the WMA prior to the clearing was difficult. Ms. Barney concluded that it was not possible to determine an accurate monetary value of the trees lost during the clearing.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
AARON VORTHMANN
IV. CONCLUSIONS OF LAW

The parties hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code 461A.41 prohibits the removal or destruction of any tree, shrub, plant, or flower on state land without the written permission of the Natural Resource Commission (Commission).
2. Iowa Code 461A.35 prohibits the removal of any plant life, trees, or wood from lands under the jurisdiction of the Commission except as may be allowed under “the terms, conditions, limitations, and restrictions” adopted by the Commission.
3. Iowa Code 461A.4 prohibits construction activities on lands under the jurisdiction of the Commission and directs the Commission to adopt and enforce rules regulating such activities. The Commission has done so in 571 IAC 13.
4. 571 IAC 13.4(1) states that “[n]o person shall...alter the characteristics of public lands or waters under the jurisdiction of or managed by the commission without a permit issued by the department prior to commencement of such activities....”
5. As Mr. Vorthmann did not have a permit issued by the Department or the written permission of the Commission to clear trees and other vegetation on the WMA, he has violated the code and rule provisions listed above.

V. ORDER

THEREFORE, the Department hereby orders and Aaron Vorthmann agrees to the following:

1. Mr. Vorthmann shall obtain a Sovereign Lands Construction Permit from the Department. Subject to the terms of this permit, and in consultation with Mr. Dollison, Mr. Vorthmann will remove all dead trees and other woody debris that remains on the WMA and in the river as a result of the clearing activities. This material must be removed from Department property and properly disposed of by July 15, 2016.
2. Mr. Vorthmann will insure that woody debris piled on his adjacent property does not impact the WMA during flood events by disposing of it in a timely manner, or by removing any debris that ends up on the WMA in consultation with Mr. Dollison.
3. By May 31, 2016, Mr. Vorthmann will sign an access easement granting the Department access rights to the impacted WMA in order to facilitate restoration activities. This easement will provide access to Department staff and contractors and is not intended to provide access to the general public.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
AARON VORTHMANN

VI. PENALTY

1. Iowa Code section 461A.5B and 571 IAC 13.17 authorize the assessment of civil penalties of up to \$5,000 per day of violation for the violations involved in this matter. Criminal sanctions are also available pursuant to 461A.5B and 571 IAC 13.15(2)"a".
2. The Department has determined that a monetary penalty is not appropriate in this case based on analysis of the following factors:

ECONOMIC BENEFIT: Mr. Vorthmann has not benefitted economically from these violations. In fact, he has expended time and resources clearing the property which he will not now be able to recoup through the farming he intended to do on the property.

GRAVITY: Clearing of WMA is a serious violation as it destroys the wildlife habitat that is a primary reason for the existence of the WMA. Additionally it reduces the property's value for public recreation in the near term. However, in this case, the area cleared was small and it was not regularly accessed by the public due to its isolated location.

CULPABILITY: Mr. Vorthmann has a duty to know where his property line is located. However, the boundary situation at the WMA is unusual due to past changes in the location of the river channel, and the Department accepts that this was an unfortunate but honest mistake on Mr. Vorthmann's part.

VII. WAIVER OF APPEAL RIGHTS

571 IAC 13.17 and 571 IAC 7.4(1) authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Aaron Vorthmann. By signing this Order all rights to appeal this Order are waived.

VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to 461A.5A, 461A.5B, and 571 IAC 13.16-17.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
AARON VORTHMANN

Aaron Vorthmann

AARON VORTHMANN

Dated this 8 day of May, 2016

Chuck Gipp

CHUCK GIPP, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 10th day of May, 2016

Aaron Vorthmann: Wildlife Bureau, Nishnabotna Unit; Aaron Brees; 461A, 571.13