



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
LAND USE PLANNING COMMISSION  
22 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0022

WALTER E. WHITCOMB  
COMMISSIONER

NICHOLAS D. LIVESAY  
EXECUTIVE DIRECTOR

# MEMORANDUM

**To:** Commission Members  
**From:** Billie J. MacLean, Regional Representative, Ashland Regional Office  
**Date:** March 1, 2016  
**Re:** Enforcement Cases EC 90-35 EC 97-46; Guy McCluskey and Donna LaForge, T17 R 3 WELS, Aroostook County

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## Background Information and Administrative History

At the December 2015 meeting, staff presented Enforcement Cases EC 90-35 & EC97-46 regarding a 16 foot by 62 foot mobile home with 16 foot by 31 foot deck and a 8 foot by 10 foot shed constructed without a permit and filling and grading in excess of the Commission's standards. This development activity violated the Commission's standards at the time it was completed and remains in violation today.

Prior to the meeting, staff had offered an Administrative Settlement Agreement (see Attachment A) to McCluskey and LaForge requiring that they pay a civil penalty of \$5,850, remove the 16 foot by 31 foot lake-side deck, remove or relocate the 8 foot by 10 foot shed to a conforming location, relocate the mobile home 27 feet farther from the lake, and stabilize all areas of disturbed soil. Future development within 100 feet of the lake would be limited to normal maintenance and repair of the mobile home under this agreement. McCluskey and LaForge were not interested in signing this settlement.

At the December meeting, McCluskey and LaForge presented a timeline of the events on the property and the Commission discussed possible alternatives for resolving the violation, including whether McCluskey and LaForge should be required to relocate their mobile home farther from the lake. Ultimately, the Commission voted to table the matter until the February meeting.

In order to assist the Commission and respond to questions raised during the December meeting, staff presented the enforcement cases again at the February meeting along with some information regarding past cases involving the relocation of a camp or dwelling. Additionally, staff drafted an alternative settlement for the Commission to consider. This agreement requires McCluskey and LaForge to pay a civil penalty of \$11,105, remove the 16 foot by 31 foot lake-side deck, remove or relocate the 8 foot by 10 foot shed to a conforming location, and stabilize all areas of disturbed soil. The mobile home would not be required to be relocated. The Commission voted to offer the alternative settlement to McCluskey and LaForge.

The settlement has now been signed by McCluskey and LaForge. Staff believes that this agreement is in keeping with your Compliance and Enforcement Response Policy and request that you ratify the agreement.

Enclosures:



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ADMINISTRATIVE SETTLEMENT AGREEMENT  
In the Matter of

Guy McCluskey and Donna LaForge ) STATE OF MAINE  
73 Deschenes Street ) Land Use Planning Commission  
Grand Falls, NB E3Y 1B8 Canada ) (Enforcement Cases EC 90-35 and EC 97-46)

This Agreement by and among Guy McCluskey and Donna LaForge (hereinafter "McCluskey/LaForge"), and the Maine Land Use Planning Commission (hereinafter the "Commission") is entered into pursuant to 12 M.R.S. subsection 685-C(8) and the Commission's Compliance and Enforcement Response Policy.

McCluskey/LaForge and the Commission agree as follows:

1. **Commission Authority:** Pursuant to 12 M.R.S., Chapter 206-A, the Commission has regulatory authority over the activities described herein.
2. **Respondents:** Guy McCluskey and Donna LaForge are residents of Grand Falls, New Brunswick, Canada.
3. **Location:** McCluskey/LaForge lease a lot from Allagash Timberlands LP on Long Lake in T17 R 3 WELS Township, Aroostook County, Maine described in Maine Revenue Service's property tax records as part of Lot 1 of Plan 01 on Map AR011. The parcel is further described as Allagash Timberlands LP Lease #2799, Lease Lot #68. The size of the lot is approximately 25,000 square feet with approximately 100 feet of shoreline frontage on Long Lake.
4. **Zoning:** (D-RS) Residential Development Subdistrict
5. **Affected Waterbody:** Long Lake

The Commission has identified Long Lake as a management class 7, resource class 2, accessible, developed lake with the following resource ratings: significant fisheries resources, significant cultural resources.

6. **Background:**
  - A. Prior to 1982, the subject lease lot was developed with a pre-Commission seasonal camp and an 8 foot by 8 foot shed containing a bathroom, both constructed in the 1960s. The camp was served by a steel septic tank with a dry well combined sewage disposal system, also installed in 1965. The setbacks of the pre-Commission camp from Long Lake, the access road and property lines are unknown. The 8 foot by 8 foot storage shed was constructed approximately 61 feet from the normal high water mark of Long Lake, 56 feet from the Van Buren Cove East Side Road, and 7 feet from the nearest side property boundary line.

- B. In 1982, the prior owner, Guildor LaForge (hereinafter "LaForge"), replaced the pre-Commission seasonal camp with a 14 foot by 48 foot mobile home with an attached 8 foot by 22 foot lake-side deck, and installed an 8 foot by 10 foot storage shed on the lot, all without obtaining a prior permit from the Commission. The mobile home was connected to the existing combined sewage disposal system, and set back approximately 44 feet from the normal high water mark of Long Lake, 45 feet from the Van Buren Cove East Side Road and 5 feet from the nearest side property boundary line. The 8 foot by 10 foot storage shed was constructed approximately 71 feet from the normal high water mark of Long Lake, 40 feet from the Van Buren Cove East Side Road and 21 feet from the nearest side property boundary line.
  - C. In 1989, LaForge removed the previously installed mobile home with attached deck from the lot, replaced it with a 16 foot by 62 foot mobile home with an attached 16 foot by 31 foot lake-side deck, and removed the existing steel septic tank and replaced it with a 1000 gallon PVC septic tank, all without prior permit approval from the Commission. The replacement mobile home is set back 38 feet from the normal high water mark of Long Lake, 47 feet from the Van Buren Cove East Side Road and 10 feet from the nearest side property boundary line. The lake-side deck is set back 22 feet from the normal high water mark of Long Lake, 72 feet from the Van Buren Cove East Side Road and 13 feet from the nearest side property boundary line.
  - D. On July 27, 1995, LaForge submitted an after-the-fact building permit application to the Commission seeking approval for the existing mobile home with deck, the two existing storage sheds, and the existing combined sewage disposal system. With his application, LaForge submitted a design for a combined sewage disposal system to be installed beyond the boundaries of their lease lot.
  - E. On February 4, 1997, the Commission issued Denial of Building Permit BP 7386 to LaForge based, in part, on his failure to provide evidence of right, title, or interest to the proposed septic disposal site and their failure to fully comply with the Commission's minimum dimensional requirements pertaining to minimum set back distances from roads, property boundary lines, and waterbodies.
  - F. In Spring of 1997, staff inspected the property and reported that LaForge had cleared and filled and graded an approximately 65 foot by 100 foot (6,500 sq. ft.) area beside the existing mobile home and an approximately 58 foot by 81 foot (4,698 sq. ft.) area across the road from the mobile home.
  - G. In 2011, McCluskey/LaForge purchased the buildings and were added to the lease. In Summer of 2012, McCluskey/LaForge submitted a design for a combined sewage disposal system dated July 22, 2012 and a copy of their 2012-2013 License with Allagash Timberlands, LP for an additional 100 foot by 150 foot lot (identified as Lot 68A), proposing to install the proposed system. The system was installed in June of 2013 and inspected by the Local Plumbing Inspector on June 18, 2013.
  - H. In May of 2014, staff inspected the property and reported that the area beside the mobile home is now relatively stable, however, the area across the road has been enlarged to an approximately 6,000 square feet gravel parking area and it has not been properly stabilized.
7. **Description of Activities:** In addition to the pre-Commission 8 foot by 8 foot storage shed, the subject property is currently developed with a 16 foot by 62 foot mobile home with an attached 16 foot by 31 foot lake-side deck and an 8 foot by 10 foot storage shed on the lot without a permit from the Commission. The mobile home is set back 38 feet from the normal high water mark of Long Lake, 47 feet from the Van Buren Cove East Side Road, and 10 feet from the nearest side property boundary line. The lake-side deck is set back 22 feet from the normal high water mark of Long Lake, 72 feet from the Van Buren Cove East Side Road, and

13 feet from the nearest side property boundary line. The 8 foot by 10 foot storage shed was constructed approximately 71 feet from the normal high water mark of Long Lake, 40 feet from the Van Buren Cove East Side Road, and 21 feet from the nearest side property boundary line.

8. **Violations:** The actions described in Paragraph 7 above resulted in violations of the following section of 12 M.R.S. Chapter 206-A and the following sections of the Commission's Land Use Districts and Standards (Standards).
- A. 12 M.R.S. § 685-B(1)(A)  
A structure or part of a structure may not be erected, changed, converted or wholly or partly altered or enlarged in its use or structural form without a permit issued by the commission. Normal maintenance or repair may be made to a structure or part of a structure without a permit issued by the commission in locations other than areas of special flood hazard as defined in the commission's rules.
- B. Standards, Section 10.26,D,1  
Except as otherwise provided, the minimum setback for structures is 100 feet from the normal high water mark of a body of standing water 10 acres or greater in size, 50 feet from the traveled portion of all roadways, and 15 feet from side and rear property boundary lines.
- C. Standards, Section 10.11,B,1  
Permits are required for all expansions, reconstructions, relocations, changes of use, or other development of nonconforming structures, uses and lots, except where specifically provided in this section 10.11. In order to obtain a permit, the applicant must meet the approval criteria in 12 M.R.S.A. § 685-B(4) and demonstrate that (a) the project will not adversely affect surrounding uses and resources and (b) that there is no increase in the extent of nonconformance, except in instances where a road setback is waived by the Commission in order to increase the extent of conformance with a waterbody setback.
- D. Standards, Section 10.11,C,2,a  
**Meeting Setbacks to the Greatest Extent Possible.** Reconstruction or replacement must comply with current minimum setback requirements to the maximum possible extent. In determining whether the proposed reconstruction or replacement meets the setback to the maximum possible extent, the Commission may consider the following factors:
- size of lot,
  - slope of the land,
  - potential for soil erosion and phosphorus export to a water body,
  - location of other legally existing structures on the property at the time of the damage, destruction or removal,
  - location of the septic system and other on-site soils, suitable for septic systems at the time of the damage, destruction or removal,
  - type and amount of vegetation to be removed to accomplish the relocation, and physical condition and type of existing foundations, if any.
- E. Standards, Section 10.27,F,1  
Within 250 feet of water bodies and wetlands, the maximum size of a filled or graded area, on any single lot or parcel, shall be 5,000 square feet. This shall include all areas of mineral soil disturbed by the filling or grading activity.

F. Standards, Section 10.27,F,5

Where filled or graded areas are in the vicinity of water bodies or wetlands, such filled or graded areas shall not extend closer to the normal high water mark of a flowing water, a body of standing water, tidal water, or upland edge of wetlands identified as a P-WL1 subdistrict than the distance indicated in the following table:

Average Slope of Land Between Exposed Mineral Soil and Normal High Water Mark or Upland Edge (Percent)	Width of Strip Between Exposed Mineral Soil and Normal High Water Mark or Upland Edge (Feet Along Surface of the Ground)
10 or less	100
20	130
30	170
40	210
50	250
60	290
70	330

Table 10.27,F-1. Unscarified filter strip width requirements for exposed mineral soil created by filling and grading.

G. Standards, Section 10.27,F,6

All filled or graded areas shall be promptly stabilized to prevent erosion and sedimentation. Filled or graded areas, including all areas of disturbed soil, within 250 feet of water bodies and wetlands, shall be stabilized according to the Guidelines for Vegetative Stabilization contained in Appendix B of this chapter.

9. **Remedial Action:** As of March 13, 2014, neither the LaForges nor McCluskey had taken any remedial actions other than to lease additional land and install a combined sewage disposal system.
10. **Official Record:** This Agreement shall not be effective nor become part of the official record unless and until it is ratified by the Commission.
11. **Conditions:** To resolve the violations described in Paragraph 7 and 8 above, McCluskey/LaForge, jointly and severally, agree to:
  - A. Within 10 days of the effective date of this agreement, pay a civil penalty of eleven thousand one hundred and five dollars (\$11,105). The payment shall be by check or money order made payable to the "Treasurer, State of Maine" c/o Maine Land Use Planning Commission, 22 State House Station, Augusta, Maine 04333-0022.
  - B. By August 1, 2016, remove the existing 16 foot by 31 foot lake-side deck located 22 feet from Long Lake. The deck must be removed from the lot and, along with other construction debris, must be disposed of in a proper manner, in compliance with applicable state and federal solid waste laws and rules.
  - C. By August 1, 2016, either: (a) remove the existing 8 foot by 10 foot shed from the lot and dispose of it in a proper manner, in compliance with applicable state and federal solid waste laws and rules; or (b) obtain a permit from the Commission and relocate the shed to a conforming location 100 feet from the normal high water mark of Long Lake, 50 feet from Van Buren Cove East Side Road, and 15 feet from property boundary lines.

- D. By August 1, 2016, all filled or graded areas, other than the existing driveway and parking areas, shall be promptly stabilized to prevent erosion and sedimentation. Filled or graded areas, including all areas of disturbed soil, within 250 feet of water bodies and wetlands, shall be stabilized according to the Guidelines for Vegetative Stabilization contained in Appendix B of this chapter.
- E. The following restrictions on the use of the subject property: The existing 16 foot by 62 foot dwelling on slab foundation as constructed and setback 38 feet from the normal high water mark of Long Lake, 47 feet from the Van Buren Cove East Side Road and 10 feet from the nearest side property boundary line may remain on the property for so long as all of the terms and conditions of this Agreement are complied with. Normal maintenance and repair of the structure is allowed, however, should 50% or more of the structure be removed, replaced, damaged or destroyed for whatever reason, it may not be repaired or replaced unless the repairs or replacement structure fully complies with applicable Commission standards and then only by prior permit approval from the Commission. No expansions of the dwelling or addition, including, but not limited to, decks or porches, shall be constructed unless the structure is also relocated to fully comply with applicable Commission standards and then only by prior permit approval from the Commission.
- F. The following conditions governing the conveyance of the subject property: McCluskey/LaForge shall not sell, lease, transfer or otherwise convey the subject property unless and until all terms and conditions of this Agreement are completed to the satisfaction of the Commission, and then such sale, lease, transfer or other conveyance shall be made with full disclosure of the terms of this Agreement to the buyer, lessee or recipient, and made subject to terms of sale, lease or transfer that obligate the buyer, lessee or recipient of the subject property to fully comply with the terms of this Agreement. This Agreement shall be binding upon McCluskey/LaForge, their heirs, successors and assigns in the subject property or any portion of it. Any person acquiring all or any portion of the subject property shall be subject to this Agreement and bound to comply with the terms hereof as if that person were McCluskey/LaForge.
- G. The following actions to be taken by McCluskey/LaForge and the Commission to record this Agreement in the Northern Aroostook County Registry of Deeds: Within 10 days of signature by all parties hereto, McCluskey/LaForge shall submit to the Commission the recording fee in the amount of \$34.00 to be paid to the Northern Aroostook County Registry of Deeds, for the recording of this Agreement. Payment must be by check or money order, made payable to the Aroostook County Registry of Deeds. Upon receipt of payment, staff will record the Agreement in the Northern Aroostook County Registry of Deeds in a manner that causes it to be properly indexed to the subject property. In the event that the Respondents fail to submit the appropriate recording fee, the Commission may record the Agreement in the Northern Aroostook County Registry of Deeds without waiver of the violation caused by the Respondents' failure to do so.
12. **Release:** In consideration for, but only upon completion of, the actions called for in Paragraph 11 above in accordance with the terms and conditions of this Agreement, the Commission and the Attorney General shall release their causes of action against McCluskey/LaForge arising from the violations described in Paragraphs 7 and 8 above.

**Respondents**

By: Guy McCluskey Date: February 12, 2016  
Guy McCluskey

COUNTRY OF CANADA  
Province of New Brunswick, ss.

Date: 2-12-16

Personally appeared the above named Guy McCluskey and acknowledged the foregoing to be his free act and deed.

Before me,

Jessica L. Cyr  
Notary Public  
JESSICA L. CYR  
Notary Public, Maine  
My Commission Expires June 14, 2017

(Type or Print Name as Signed)  
My Commission Expires: 6-14-2017

By: Donna LaForge Date: February 12, 2016  
Donna LaForge

COUNTRY OF CANADA  
Province of New Brunswick, ss.

Date: 2-12-16

Personally appeared the above named Donna LaForge and acknowledged the foregoing to be her free act and deed.

Before me,

Jessica L. Cyr  
Notary Public  
JESSICA L. CYR  
Notary Public, Maine  
My Commission Expires June 14, 2017

(Type or Print Name as Signed)

My Commission Expires: 6-14-17

**Maine Land Use Planning Commission**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Nicholas D. Livesay, Director

STATE OF MAINE  
County of Kennebec, ss.

Date: \_\_\_\_\_

Personally appeared the above named Nicholas D. Livesay, in his capacity as Director of the Maine Land Use Planning Commission, and acknowledged the foregoing to be his free act and deed in his said capacity and the free act and deed of the Maine Land Use Planning Commission.

Before me,

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
(Type or Print Name as Signed)

My Commission Expires: \_\_\_\_\_

**Office of Attorney General**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Lauren E. Parker, AAG