



STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
LAND USE PLANNING COMMISSION  
106 HOGAN ROAD, SUITE 8  
BANGOR, MAINE 04401

WALTER E. WHITCOMB  
COMMISSIONER

NICHOLAS D. LIVESAY  
EXECUTIVE DIRECTOR

PAUL R. LEPAGE  
GOVERNOR

# Memorandum

**Date:** April 30, 2015

**To:** Commission Members

**From:** Karen E. Bolstridge, Downeast Regional Representative, Permitting and Compliance KEB

**Re:** Administrative Settlement Agreement for Enforcement Case EC 2013-17  
Lassell Island, LLC, Lassell Island, Knox County, Maine

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Attached is a staff recommendation for an Administrative Settlement Agreement (Agreement) for Enforcement Case EC 2013-17 with Lassell Island, LLC (Mr. Christopher I. Page, Member) for violations associated with a property on Lassell Island, Knox County, Maine.

Sometime after March 29, 2004, Lassell Island, LLC: (1) constructed a 125-foot long section of stone retaining wall without the required permit from the Commission. The retaining wall starts at an existing boat storage shed at the edge of the Atlantic Ocean, follows the mean high water mark approximately 125 feet southward, and ends at a significant ledge outcrop. The retaining wall ranges from 4 feet to 9 feet in height and is set back 0 feet from the mean high water mark of the Atlantic Ocean in most locations but also extends seaward of the mean high water level into the Atlantic Ocean; and (2) constructed an approximately 150-foot long v-shaped retaining wall on the western edge of a pier access road without the required permit from the Commission. The retaining wall starts at the pier, follows the access road and ties into a breakwater. The retaining wall is set back less than 75 feet from the mean high water mark of the Atlantic Ocean and is approximately one to two feet high.

In April of 2014, staff presented a prior settlement agreement to resolve the two retaining wall violations to the Commission. After a review of the circumstances, the Commission rejected the settlement agreement and directed staff to renegotiate the settlement with focus given to the implications of removing one or both of the retaining walls instead of allowing them to remain and to readjusting the civil penalty, which was \$6,000, to reflect the scope of the violations.

Staff renegotiated a revised settlement agreement which includes payment of a larger civil penalty and provisions requiring Lassell Island, LLC to remove the larger unauthorized retaining wall and to permit replacement rip-rap and stabilization plantings in compliance with the Commission's *Land Use Districts and Standards* and the *Standards for Installation of Riprap*. The Agreement further allows Lassell Island, LLC to leave the second, smaller retaining wall in place. Based on a review of the information provided by Lassell Island, LLC's engineer, staff believes that because the wall is short in height and is functioning to stabilize the wharf access way, and because the retaining wall has base anchor rocks in place as would be required by rip-rap, that removing the wall altogether, or removing the retaining wall and replacing it with rip-rap would cause more harm than allowing it to remain as constructed.

In summary, in order to resolve the retaining wall violations covered under Enforcement Case EC 13-17, Lassell Island, LLC has agreed to:

- (1) pay an \$11,000 civil penalty;
- (2) submit a complete application seeking permit approval to remove and replace the 125 foot long section of stone retaining wall south of the boat storage shed with rip-rap and stabilization plantings; the project is to be complete by October 1, 2015;
- (3) the existing approximately 150 foot v-shaped retaining wall on the western edge of the pier access road which starts at the pier, follows the access road, and ties into the breakwater, may remain in existence on the subject property in its current configurations for so long as it is maintained in a stable condition to prevent erosion or sedimentation to the Atlantic Ocean. Normal maintenance and repair of the retaining wall is allowed, however, should 50% or more of the retaining wall be removed, replaced, damaged or destroyed for whatever reason, it may not be repaired or replaced unless the repairs or replacement fully complies with applicable standards and permit requirements of the Commission, and then only by prior permit approval from the Commission;
- (4) fully disclose the terms of this Agreement to a buyer, lessee or recipient, and
- (5) record the Agreement in the Waldo and Knox County Registry of Deeds.

Staff believes that this agreement is in keeping with your Compliance and Enforcement Response Policy and request that you ratify the agreement.

Attachments:  
Appendix A – Location Map(s)  
Appendix B – Site Plan  
Appendix C – Proposed Administrative Settlement Agreement

xc: EC 13-17 File; WL 0062 File; BP 12277 File

**ADMINISTRATIVE SETTLEMENT AGREEMENT FOR  
ENFORCEMENT CASE EC 2013-17**

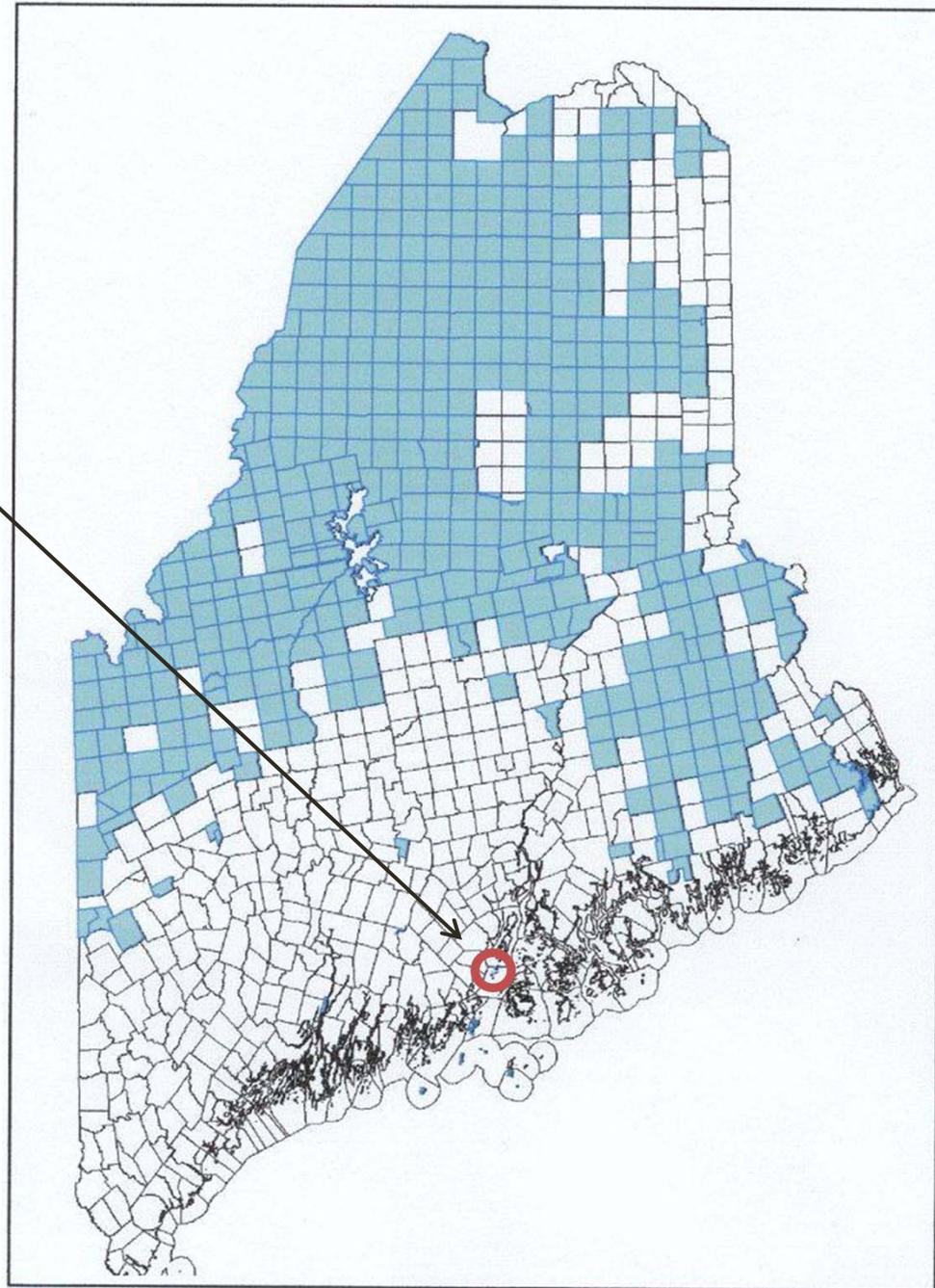
**Lassell Island, LLC (Mr. Christopher I. Page, Member)  
Lassell Island, Knox County, Maine**

**Appendix A  
Location Map(s)**

# Location

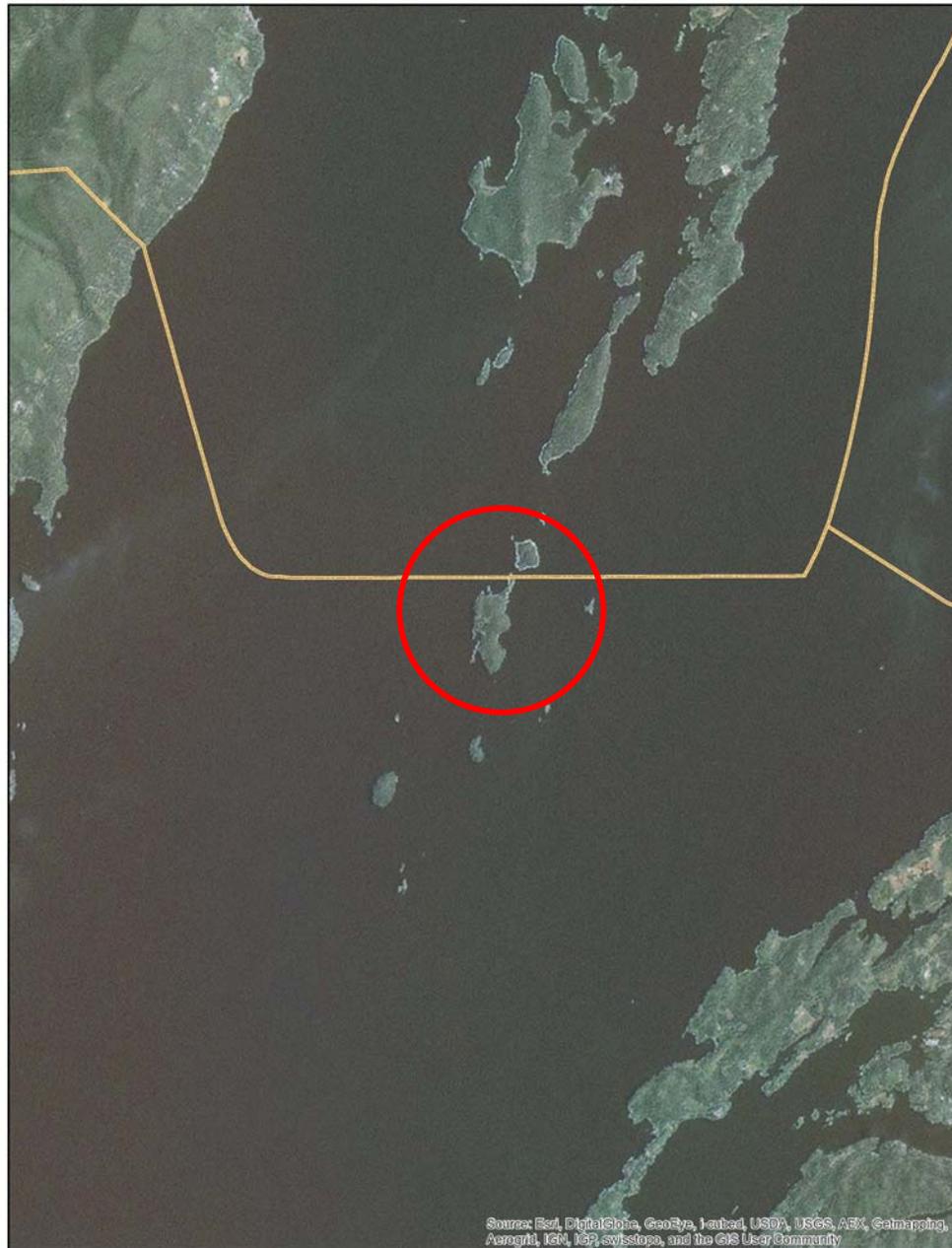
**Lassell Island**

**Knox County**



# Location

**Lassell Island**  
**Knox County**





Google earth

Google earth

feet  
meters



**ADMINISTRATIVE SETTLEMENT AGREEMENT FOR  
ENFORCEMENT CASE EC 2013-17**

**Lassell Island, LLC (Mr. Christopher I. Page, Member)  
Lassell Island, Knox County, Maine**

**Appendix B  
Site Plan**



Google earth

feet  
meters



**ADMINISTRATIVE SETTLEMENT AGREEMENT FOR  
ENFORCEMENT CASE EC 2013-17**

**Lassell Island, LLC (Mr. Christopher I. Page, Member)  
Lassell Island, Knox County, Maine**

**Appendix C  
Administrative Settlement Agreement**



6. Description of Activities: Sometime after March 29, 2004, Lassell Island, LLC:

- A. Constructed a 125 foot long section of stone retaining wall south of the boat storage shed without the required permits from the Commission. The retaining wall starts at the foundation of the boat storage shed and ends at a significant ledge outcrop; the retaining wall ranges from 4 feet to 9 feet in height. The retaining wall is set back 0 feet from the mean high water mark of the Atlantic Ocean and also extends seaward of the mean high water level of the Atlantic Ocean.
- B. Constructed an approximately 150 foot v-shaped retaining wall on the western edge of the pier access road without the required permits from the Commission. The retaining wall starts at the pier, follows the access road and ties into the breakwater. The retaining wall is set back less than 75 feet from the mean high water mark of the Atlantic Ocean.

7. Administrative History:

- A. Historically, the island lot was developed with a 28 foot by 55 foot farmhouse, a 30 foot by 32 foot garage, a 14 foot by 24 foot shed, an 18 foot by 40 foot boat storage shed, a 160 foot pier, and a 30 foot by 40 foot seasonal camp. These structures were developed prior to the adoption of the Commission's Rules and Regulations. The island lot has approximately 7,323 feet of water frontage on the Atlantic Ocean. The seasonal camp was destroyed by fire in 2002.
- B. Wetlands Alteration Permit WL 0062 by Special Exception and Water Quality Certification, issued by the Commission at a meeting held March 12, 2003 to Lassell Island, L.L.C., authorized a 50-foot extension to the existing 160 foot pier (for a total of length of 210 feet) and dredging of 63,200 square feet of ocean bottom within Half-Gallon Cove.
- C. Building Permit BP 12277, issued to Christopher I. Page on March 29, 2004, authorized the construction of a 40 foot by 30 foot seasonal camp with a 12 foot by 40 foot deck and a combined sewage disposal system. The seasonal camp, including the deck, was conditioned to be setback 75 feet from the mean high water level of the Atlantic Ocean and 15 feet from other property boundary lines.
- D. The U.S. Army Corps of Engineers (Corps) issued after-the-fact Corps Permit # NAE-200103135 ATF on May 23, 2012 to Christopher I. Page to retain and maintain a 5,133 square foot area of stone fill below the High Tide Line of Half Gallon Cove on the west side of Lassell Island in Penobscot Bay, Knox County, Maine. The purpose of the placed fill was for the creation of a seawall to protect an existing pier, ramp and float and to prevent shoreline erosion. The Corps determined that the project would have only minimal individual and cumulative impacts on waters and wetlands of the United States. The Corps did not require compensation for the project.
- E. Amendment A to Building Permit BP 12277, issued to Lassell Island, L.L.C. on June 30, 2012, granted after-the-fact approval for reconstruction and expansion of the boat storage shed, to 18 feet by 58 feet, and after-the fact approval for construction of a 100 foot by 150 foot pond. The boat storage shed was conditioned to be setback above (landward of) the mean high water level of the Atlantic Ocean.

F. Amendment A to Wetland Alteration Permit WL 0062, issued to Lassell Island, L.L.C. on February 25, 2014, granted after-the-fact approval of an approximately 45 foot by 190 foot breakwater and permit approval to complete upgrades to improve the stability of the breakwater by replacing smaller existing stone with larger, 3 foot to 4 foot diameter stone.

8. Violations: The actions described in Paragraph 6, above resulted in violations of the following sections of 12 M.R.S. Chapter 206-A and the Commission's *Land Use Districts and Standards* (the "Standards").

**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.

**12 M.R.S. § 685-B(1)(C)**

A person may not commence any construction or operation of any development without a permit issued by the commission.

**Standards, Section 10.26,D**

The minimum setbacks for structures related to residential structures are 75 feet from the nearest shoreline of tidal water, 20 feet from the traveled portion of all coastal island roadways, and 15 feet from side and rear property lines.

**Standards, Section 10.23,L,3,c,(16)**

Shoreland alterations may be allowed within (P-SL) Shoreland Protection Subdistrict upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. §685-B, and subject to the applicable requirements set forth in Sub-Chapter III.

**Standards, Section 10.23,N,3,c,(11)**

Shoreland alterations may be allowed within (P-WL) Wetland Protection Subdistrict upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. §685-B and subject to the applicable requirements set forth in Sub-Chapter III.

**Standards, Section 10.23,L,3,c,(7)**

Filling and grading which is not in conformance with the standards in Section 10.27,F of the Commission's Standards may be allowed within (P-SL) Shoreland Protection Subdistrict upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. §685-B, and subject to the applicable requirements set forth in Sub-Chapter III.

**Standards, Section 10.23,N,3,c,(6)**

Filling and grading may be allowed within (P-WL) Wetland Protection Subdistrict upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. §685-B and subject to the applicable requirements set forth in Sub-Chapter III.

**Standards, Section 10.27,F**

Filling and grading activities not in conformance with the standards of this section may be allowed upon issuance of a permit from the Commission provided that such types of activities are allowed in the subdistrict involved. An applicant for such permit shall show by a preponderance of the evidence that the proposed activity, which is not in conformance with the standards of this section, shall be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area.

**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.

**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 P-WL1 subdistrict than the distance indicated in Table 10.27,F-1.

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.

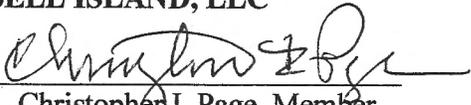
9. **Official Record:** This Agreement shall not be effective nor become part of the official record unless and until it is ratified by the Commission.
10. **Conditions:** To resolve the violations described in Paragraph 6 and 8 above, Lassell Island, LLC agrees to:
  - A. Within 30 days of the date of signature of this document by all parties, pay a civil penalty of eleven thousand dollars (\$11,000). 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. Within 30 days of the date of signature of this document by all parties, submit a complete application, in compliance with the Commission's *Land Use Districts and Standards* and the *Standards for Installation of Riprap*, seeking permit approval to remove and replace the 125 foot long section of stone retaining wall south of the boat storage shed with rip-rap and stabilization plantings.
- C. By October 1, 2015, with the exception of the v-shaped retaining wall described in Condition 11.D below, cause the property to fully comply with the permit requirements and standards of the Commission, including the terms and conditions of any permit issued by the Commission, by removing the 125 foot long section of stone retaining wall south of the boat storage shed and replacing it with rip-rap and stabilization plantings in compliance with the terms and conditions of permit approval.
- D. The following restrictions on the use of the subject property: The existing approximately 150 foot v-shaped retaining wall on the western edge of the pier access road which starts at the pier, follows the access road, and ties into the breakwater, may remain in existence on the subject property in its current configurations for so long as it is maintained in a stable condition to prevent erosion or sedimentation to the Atlantic Ocean. Normal maintenance and repair of the retaining wall is allowed, however, should 50% or more of the retaining wall be removed, replaced, damaged or destroyed for whatever reason, it may not be repaired or replaced unless the repairs or replacement fully complies with applicable standards and permit requirements of the Commission, and then only by prior permit approval from the Commission.
- E. The following conditions governing the conveyance of the subject property: Lassell Island, LLC shall not sell, lease, transfer, or otherwise convey the subject property unless full disclosure of the terms of this Agreement is made to the buyer, lessee or recipient. This Agreement shall be binding upon Lassell Island, LLC, its 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 Lassell Island, LLC.
- F. The following actions to be taken by Lassell Island, LLC and the Commission to record this Agreement in the Waldo/Knox County Registry of Deeds: Within 30 days of the date of signature of this document by all parties, Lassell Island, LLC shall submit to the Commission the recording fee in the amount of \$32.00 to be paid to the Waldo County Registry of Deeds and \$32.00 to the Knox County Registry of Deeds, for the recording of this Agreement. Payment must be by check or money order, made payable to the Waldo County Registry of Deeds and the Knox County Registry of Deeds. Upon receipt of payment, staff will record the Agreement in the Waldo County Registry of Deeds and the Knox County Registry of Deeds in a manner that causes it to be properly indexed to the property that is the subject matter hereof. In the event that Lassell Island, LLC fails to submit the appropriate recording fee, the Commission may record the Agreement in the Waldo County Registry of Deeds and the Knox County Registry of Deeds without waiver of the violation caused by Lassell Island, LLC's failure to do so.

11. 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 Lassell Island, LLC arising from the violations described in Paragraphs 6 and 8 above.

**SIGNATURES FOLLOW**

**LASSELL ISLAND, LLC**

By:   
Christopher I. Page, Member

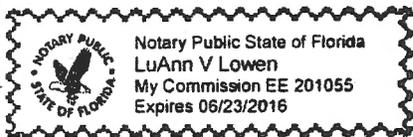
Date: 3/17/, 2015

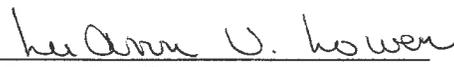
STATE OF ~~OHIO~~ Florida  
County of ~~Portage~~, ss. monroe

Date: 3/17, 2015

Personally appeared the above named Christopher I. Page, in his capacity as Member of Lassell Island LLC and acknowledged the foregoing to be his free act and deed in his said capacity and the free act and deed of Lassell Island LLC.

Before me,



  
Notary Public

LuAnn V. Lowen  
(Type or Print Name as Signed)

My Commission Expires: 6/23/16

**LAND USE PLANNING COMMISSION**

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

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

STATE OF MAINE  
County of Kennebec, ss.

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

Personally appeared the above named Nicholas D. Livesay, in his capacity as Executive Director of the 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 Land Use Planning Commission.

Before me,

\_\_\_\_\_  
Marylisa York, Notary Public

My Commission Expires: September 11, 2018

**OFFICE OF ATTORNEY GENERAL**

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

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