



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:** July 27, 2015

**To:** Commission Members

**From:** Karen E. Bolstridge, Regional Representative, Permitting and Compliance <sup>KEB</sup>

**Re:** Administrative Settlement Agreement for Enforcement Case EC 1997-035; Roger Eugene and Elizabeth Ann Day, Grand Lake Stream Plantation, Washington County, Maine

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Attached is a staff recommendation for an Administrative Settlement Agreement (Agreement) for Enforcement Case EC 1997-035 with Roger Eugene Day and Elizabeth Ann Day for violations associated with a single family residential dwelling on their property in Grand Lake Stream Plantation, Washington County, Maine (*see Appendix A - Location Map(s)*).

Description of Activities: Between 1973 and 1974 a previous lessee of the property (*now known as Lot #1 in Amendment A to Subdivision Permit SP 3117*) constructed a 20.5 foot by 32.5 foot seasonal camp with a 20.5 foot by 12 foot covered, enclosed side-porch without prior permit approval from the Commission. The camp and porch are set back 75 feet from the normal high water mark of West Grand Lake, at least 50 feet from the traveled portion of Bonney Brook Road, and at least 15 feet from other property boundary lines (*see Appendix B - Site Plan and Photograph(s)*). At the time of construction, the Commission did not yet have minimum setback requirements from waterbodies, roads and property lines established in rule.

The full "Administrative History" of the lot is outlined in the Agreement (*see Appendix C - Administrative Settlement Agreement*). That history indicates that when the dwelling was constructed and the lot was first created (August 14, 1973) it was part of an unauthorized subdivision. The unauthorized subdivision was corrected by the issuance of a zoning change and an amendment to the adjacent subdivision permit. The lot became legal on June 03, 1997. During the 1997-1998 timeframe, staff entered into negotiations with the previous lessee (Mr. Cresswell) to try to resolve the violation. The proposed resolution would have allowed Mr. Cresswell to obtain an after-the-fact permit for the structure and leave the camp in place; however, Mr. Cresswell failed to act upon the proposal.

The respondents purchased the property on February 06, 2009.

On November 24, 2014, with consideration given to the age of the violation (over 40 years), the longevity of the open enforcement case (greater than 15 years), and the timeline of the associated zoning petition and subdivision actions, Commission staff mailed a No Action Letter to the Day's indicating to the Days that the violation had been placed on the Commission's inactive file list (*see Appendix D - No*

*Action Letter*). In response to the No Action Letter, the Days contacted staff and indicated that they wish to officially resolve the violation and bring the property into compliance with the Commission's rules and regulations to more easily facilitate the sale of the property.

In the subsequent Agreement, in order to resolve the violation, the respondents have agreed, among other items, to pay a six hundred dollar (\$600.00) civil penalty within 30 days of the date of signature of the Agreement by all parties. In addition, the respondents have agreed that prior to further occupancy or October 01, 2015, whichever is earlier, they will: provide the Commission with documentation showing that there is a legally existing subsurface wastewater disposal system on the lot or they will install a subsurface wastewater disposal system in compliance with the Subsurface Wastewater Program and in a manner which minimizes risk to the flood waters; and elevate the seasonal camp and covered, enclosed side-porch such that the lowest floor is elevated to at least one foot above the base flood elevation of West Grand Lake and provide the Commission with elevation data showing that the lowest floor of the residential structure is elevated to at least one foot above the base flood elevation of West Grand Lake or provide the Commission with evidence that the structure is outside the FEMA Zone A.

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 and Photograph(s)

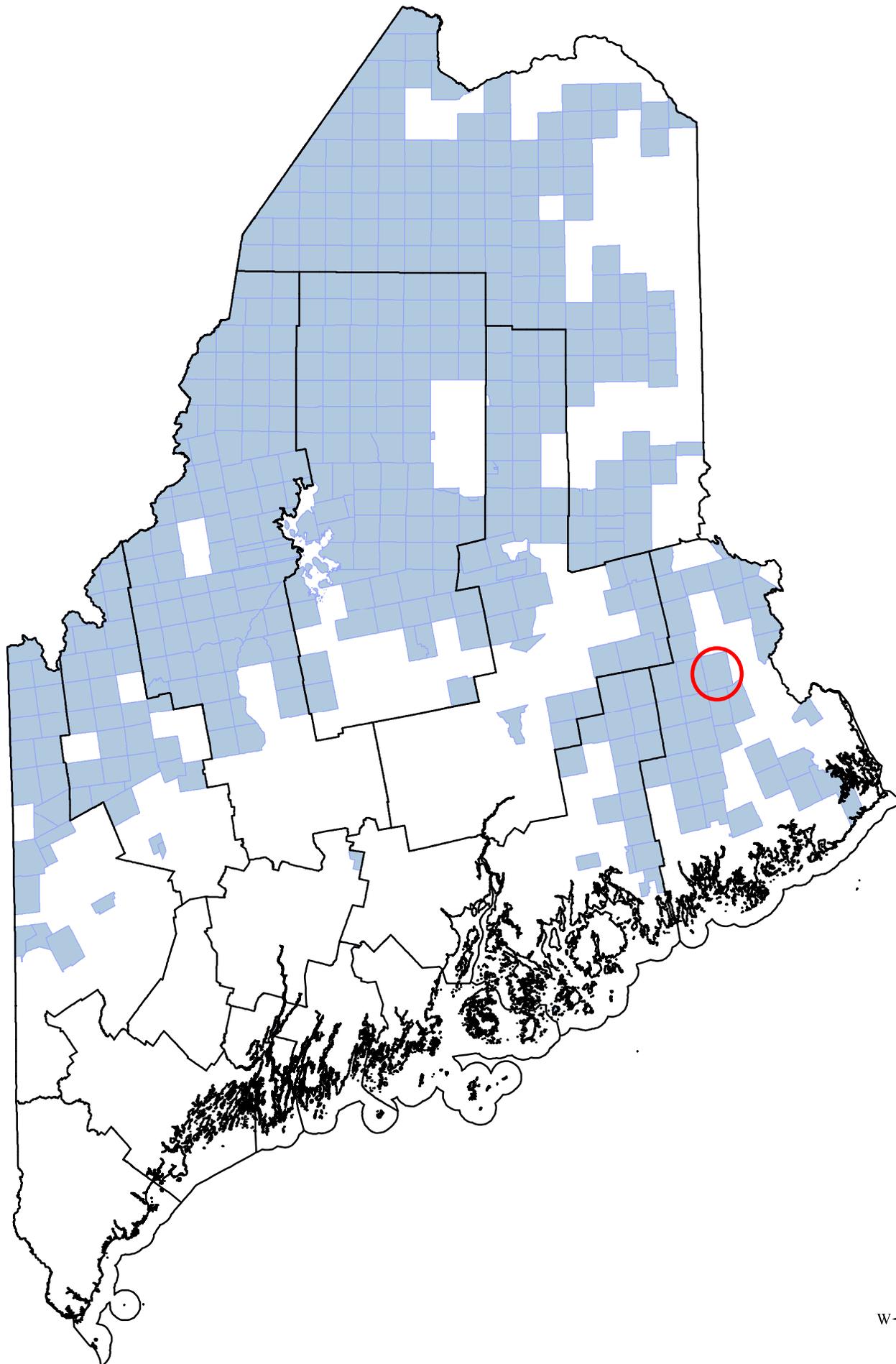
Appendix C – Administrative Settlement Agreement

Appendix D – No Action Letter

**ADMINISTRATIVE SETTLEMENT AGREEMENT FOR  
ENFORCEMENT CASE EC 1997-035**

**Roger Eugene and Elizabeth Ann Day  
Grand Lake Stream Plantation, Washington County, Maine**

**Appendix A  
Location Map(s)**



Day Property Location



Grand Lake Stream, ME



Google earth

1997

Imagery Date: 9/17/2013 45°11'57.28" N 67°47'06.39" W elev 302 ft eye alt 27428 ft



	P-GP
	D-RS
	P-WL3

1 in = 250 ft



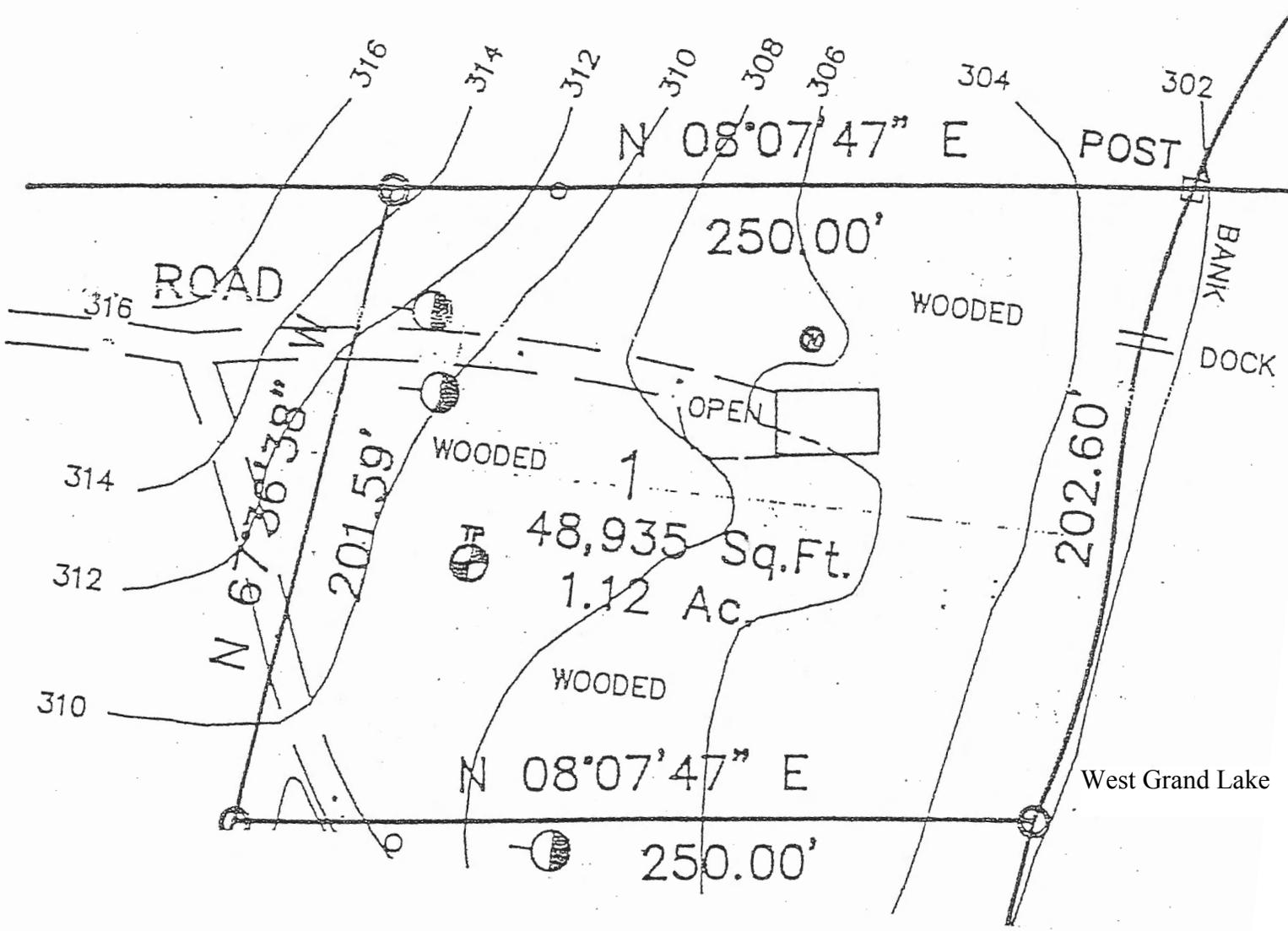
Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

**ADMINISTRATIVE SETTLEMENT AGREEMENT FOR  
ENFORCEMENT CASE EC 1997-035**

**Roger Eugene and Elizabeth Ann Day  
Grand Lake Stream Plantation, Washington County, Maine**

**Appendix B  
Site Plan and Photograph(s)**

Day Property Site Plan  
Grand Lake Stream Plantation





08.12.2014 13:36



08.12.2014 13:36

**ADMINISTRATIVE SETTLEMENT AGREEMENT FOR  
ENFORCEMENT CASE EC 1997-035**

**Roger Eugene and Elizabeth Ann Day  
Grand Lake Stream Plantation, Washington County, Maine**

**Appendix C  
Administrative Settlement Agreement**



**STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
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106 HOGAN ROAD, SUITE 8  
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**PAUL R. LEPAGE  
GOVERNOR**

**WALTER E. WHITCOMB  
COMMISSIONER**

**NICHOLAS D. LIVESAY  
EXECUTIVE DIRECTOR**

**ADMINISTRATIVE SETTLEMENT AGREEMENT  
In the Matter of**

<p>Roger Eugene Day and Elizabeth Ann Day 145 Beagle Road Lewisburg, PA 17837-7558</p>	<p>) STATE OF MAINE ) Land Use Planning Commission ) Enforcement Case EC 1997-035</p>
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This Administrative Settlement Agreement (Agreement) by and among Roger Eugene Day and Elizabeth Ann Day (hereinafter the Days) and the Maine Land Use Planning Commission (the Commission) is entered into pursuant to 12 M.R.S. subsection 685-C(8) and the Commission's Compliance and Enforcement Response Policy.

The Days 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: The Days are residents of Lewisburg, Pennsylvania.
3. Location: The Days own a 48,935 square foot (1.12 acre) lot identified as Grand Lake Stream Plantation Map 001, Lot 5A (001-005-00A) on West Grand Lake in Grand Lake Stream Plantation, Washington County, Maine (reference, Washington County Registry of Deeds Book 3496, Page 262). The lot is also known as Lot #1 in Amendment A to Subdivision Permit SP 3117.
4. Zoning: Residential Development Subdistrict (D-RS) Federal Emergency Management Agency (FEMA) Zone A and Flood Prone Area Protection Subdistrict (P-FP) by Virtue of Section 10.23,C,2 of the Commission's *Land Use Districts and Standards* (Standards).
5. Affected Waterbody: West Grand Lake

The Commission has identified West Grand Lake as a management class 3, resource class 1A, accessible, developed lake with the following resource ratings: outstanding fisheries resources, outstanding wildlife resources, outstanding scenic resources, outstanding shore character, outstanding cultural resources.

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6. Description of Activities: Between 1973 and 1974 a previous lessee of the property (*now known as Lot #1 in Amendment A to Subdivision Permit SP 3117*) constructed a 20.5 foot by 32.5 foot seasonal camp with a 20.5 foot by 12 foot covered, enclosed side-porch without prior permit approval from the Commission. The camp and porch are set back 75 feet from the normal high water mark of West Grand Lake, at least 50 feet from the traveled portion of Bonney Brook Road, and at least 15 feet from other property boundary lines. At the time of construction, the Commission did not yet have minimum setback requirements from waterbodies, roads and property lines established in rule.
  
7. Administrative History:
  - A. *November 15, 1993* - Advisory Ruling AR 93-182, issued to Prentiss and Carlisle Management Company, Inc., as agent of Webber Timberlands, verified that Lot #1 on Kitchen Cove was created on August 14, 1973 and that it was part of an unauthorized subdivision for which Commission after-the-fact approval would be required.
  
  - B. *December 18, 1996* - Zoning Petition ZP 606, issued to Webber Timberlands at a meeting of the Commission held in Augusta, Maine, authorized the rezoning of 2.2 acres (Lots #1 and #2 on Kitchen Cove on West Grand Lake) from Great Pond Protection (P-GP) subdistrict to Residential Development (D-RS) subdistrict. The change in subdistrict designation became effective on January 02, 1997.
  
  - C. *May 22, 1997* – Enforcement Case EC 97-035 was opened on the seasonal camp located on Lot #1 which had not been permitted by the Commission. In 1997, the minimum setback for residential uses was 100 feet from the nearest shoreline of a body of standing water 10 acres or greater in size such as West Grand Lake.
  
  - D. *June 03, 1997* - Amendment A to Subdivision Permit SP 3117, issued to Webber Timberlands, granted after-the-fact approval for the creation of Lots #1 and #2 in Kitchen Cove on West Grand Lake in Grand Lake Stream Plantation. The subdivision permit acknowledged that Lot #1 was subject to Enforcement Case EC 97-035 and that Lot #1 was developed with an unauthorized seasonal camp which would require a permit from the Commission. The subdivision permit further conditioned that at the time of application for a permit, the lessee would need to submit a completed application for Subsurface Wastewater Disposal in compliance with the applicable Wastewater Regulations at the time of application submission.
  
  - E. *August 21, 1998* –Commission staff mailed an application for an after-the-fact building permit to Wilbert Cresswell, the lessee of Lot #1 at that time. In the letter which accompanied the application, staff outlined a procedure which would have allowed Mr. Cresswell an opportunity to resolve the violation administratively. Mr. Cresswell failed to act upon the opportunity.

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 10.21,J,3,c,(14)**

Single family dwellings may be allowed within D-RS subdistricts upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. Section 685-B, and subject to the applicable requirements set forth in Sub-Chapter III.

**Standards, Section 10.23,C,3,d,(4)**

Single family dwellings may be allowed within P-FP subdistricts or FEMA zones A, AE, A1-30, or VE as special exceptions upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. §685-A(10), and subject to the applicable requirements set forth in Sub-Chapter III, provided that the applicant shows by substantial evidence that (a) there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant; (b) the use can be buffered from those other uses and resources within the subdistrict with which it is incompatible; and (c) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan.

**Standards, Section 10.25,T,2,a**

Development in flood prone areas, including areas of special flood hazard, shall: (1) Be designed or modified and adequately anchored to prevent flotation (excluding floating piers and docks), collapse or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy; (2) Use construction materials that are resistant to flood damage; (3) Use construction methods and practices that will minimize flood damage; and (4) Use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.

**Standards, Section 10.25,T,2,f**

New construction or substantial improvement of any residential structure shall have the lowest floor (including basement) elevated to at least one foot above the base flood elevation.

**Standards, Section 10.26,D,1**

The minimum setbacks for structures related to residential uses include 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 other property boundary lines.

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, the Days jointly and severally agree to:
  - A. Within 30 days of the date of signature of this document by all parties, pay a civil penalty of six hundred dollars (\$600.00). The payment shall be by check or money order made payable to "Treasurer, State of Maine" c/o Maine Land Use Planning Commission, 22 State House Station, Augusta, Maine 04333-0022.
  
  - B. Prior to further occupancy or by October 01, 2015, whichever is earlier, provide the Commission with documentation establishing that a legally existing subsurface wastewater disposal system exists on the property that is adequate for the existing structure and use, or install a subsurface wastewater disposal system in compliance with the rules and permit requirements of the Maine Department of Health and Human Services (DHHS), Subsurface Wastewater Program and in a manner that minimizes infiltration of flood waters into the system and discharges from the system into flood waters.

To demonstrate that a legally existing subsurface wastewater disposal system exists on the property, provide one of the following:

    - 1) a copy of the valid HHE-200 for the system on the property or for the proposed system so that the Commission may have it evaluated for compliance with the subsurface wastewater regulations;
  
    - 2) a plan of what is on the property completed by a DHHS certified septic system inspector so that the Commission may have it evaluated for compliance with the subsurface wastewater regulations; or
  
    - 3) a plan of what is on the property completed by a licensed site evaluator so that the Commission may have it evaluated for compliance with the subsurface wastewater regulations.
  
  - C. By October 01, 2015, elevate the seasonal camp and covered, enclosed side-porch such that the lowest floor is elevated to at least one foot above the base flood elevation of West Grand Lake and provide the Commission with elevation data (Elevation Certificate, Letter of Map Revision, or Letter of Map Amendment) showing that the lowest floor of the residential structure is elevated to at least one foot above the base flood elevation of

West Grand Lake, or provide the Commission with evidence that the structure is outside the FEMA Zone A.

D. The following restrictions on the use of the subject property:

- 1) The existing seasonal camp and covered, enclosed side-porch may remain in existence on the subject property in its current configuration subject to:
- 2) Normal maintenance and repair of the camp and porch that is valued at less than \$1,000 is allowed without a permit;
- 3) Normal maintenance and repair or renovation equaling or exceeding \$1,000 in cost and which do not meet the definition of substantial improvement are allowed with a permit, subject to standards.

A substantial improvement is defined for purposes of regulating development in areas of special flood hazard, any reconstruction, rehabilitation, renovation, expansion, normal maintenance and repair or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term also includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- a. Any project for improvement of a structure exclusively to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by any state or local enforcement official and which are the minimum necessary to assure safe living conditions; or
  - b. Any alteration of an historic structure, provided that the alteration will not preclude the structure's continued designation as an historic structure, and a variance is obtained from the Commission in conformance with Section 10.10, Variances (*Ch. 10.02, (199)*);
- 4) Expansion, reconstruction or substantial improvement, for whatever reason, shall not be allowed unless the expansion, reconstruction or substantial improvement fully complies with applicable standards and permit requirements of the Commission, including the setback requirements of Section 10.26,D,1, and then only by prior permit approval by special exception from the Commission.

Expansion of a structure is defined as the increase in the floor area of a structure, including attached decks and porches, or the increase in the height of a structure (*Ch. 10.02, (57)*);

Reconstruction of a structure is defined as, unless otherwise provided, the addition of a permanent foundation or the rebuilding of a structure after more than 50 percent by area of its structural components, including walls, roof, or foundation, has been destroyed, damaged, demolished or removed. Leaving one or two walls or the floor of

a structure in place, while rebuilding the remaining structure, is considered reconstruction, not normal maintenance and repair or renovation (*Ch. 10.02, (166)*).

- E. The following conditions governing the conveyance of the subject property: the Days 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 the Days, 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 the Days.
- F. The following actions to be taken by the Days and the Commission to record this Agreement in the Washington County Registry of Deeds: Within 15 days of signature by all parties hereto, the Days shall submit to the Commission the recording fee in the amount of \$36.00 to be paid to the Washington County Registry of Deeds, for the recording of this Agreement. Payment must be by check or money order, made payable to the Washington County Registry of Deeds. Upon receipt of payment, staff will record the Agreement in the Washington 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 the Days fail to submit the appropriate recording fee, the Commission may record the Agreement in the Washington County Registry of Deeds without waiver of the violation caused by the Days failure to do so.
11. Release: In consideration for, but only upon completion of, the actions called for in Paragraph 10 above in accordance with the terms and conditions of this Agreement, the Commission and the Attorney General shall release their causes of action against the Days arising from the violations described in Paragraphs 6 and 8 above.

**SIGNATURES FOLLOW**

**Respondents**

By: *Roger Eugene Day*  
Roger Eugene Day

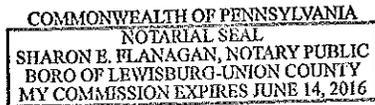
Date: 5-22, 2015

Commonwealth of Pennsylvania  
County of Union, ss.

Date: MAY 22, 2015

Personally appeared the above named Roger Eugene Day and acknowledged the foregoing to be his free act and deed.

Before me,



*Sharon E Flanagan*  
Notary Public

SHARON E FLANAGAN  
(Type or Print Name as Signed)

My Commission Expires: 06-14-2016

By: *Elizabeth Ann Day*  
Elizabeth Ann Day

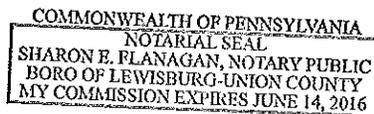
Date: 5/22, 2015

Commonwealth of Pennsylvania  
County of Union, ss.

Date: MAY 22, 2015

Personally appeared the above named Elizabeth Ann Day and acknowledged the foregoing to be her free act and deed.

Before me,



*Sharon E Flanagan*  
Notary Public

SHARON E FLANAGAN  
(Type or Print Name as Signed)

My Commission Expires: 06-14-2016

**Maine Land Use Planning Commission**

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2015  
Nicholas D. Livesay, Executive Director

STATE OF MAINE  
County of Kennebec, ss. Date: \_\_\_\_\_, 2015

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

Before me, \_\_\_\_\_  
Marylisa York, Notary Public

My Commission Expires:  
September 11, 2018

**Office of Attorney General**

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2015  
Lauren E. Parker, AAG

**ADMINISTRATIVE SETTLEMENT AGREEMENT FOR  
ENFORCEMENT CASE EC 1997-035**

**Roger Eugene and Elizabeth Ann Day  
Grand Lake Stream Plantation, Washington County, Maine**

**Appendix D  
No Action Letter**



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
LAND USE PLANNING COMMISSION  
106 HOGAN ROAD, SUITE 7  
BANGOR, MAINE 04401

WALTER E. WHITCOMB  
COMMISSIONER

NICHOLAS D. LIVESAY  
EXECUTIVE DIRECTOR

**NO ACTION LETTER**

November 24, 2014

*Via U.S. Mail*

Roger Eugene and Elizabeth Ann Day  
145 Beagle Road  
Louisburg, PA 17837-7558

Subject: No Action Letter, Enforcement Case EC 97-035, Grand Lake Stream Plantation,  
Washington County, Maine.

Subject Property: Grand Lake Stream Plantation Map 001, Lot 5A (001-005-00A)  
Lot #1 of Amendment A to Subdivision Permit SP 3117  
Washington County Registry of Deeds Book 3493, Page 262

Dear Roger Eugene and Elizabeth Ann Day:

This No Action Letter serves to inform you, and any other interested parties, that Commission staff have identified land use activities at the subject property that at the time of inspection did not appear to substantially comply with one or more of the standards, rules, or laws administered by the Commission.

Specifically, the issues identified at this property are:

1. The subject property is located adjacent to Kitchen Cove on West Grand Lake and was historically leased to Mr. Wilbert Cresswell (Cresswell). It appears the lot is located in a Residential Development Subdistrict (D-RS) and a Federal Emergency Management Agency (FEMA) Zone A. The lot is developed with a 20 foot by 32 foot seasonal camp on a temporary foundation, a 5 foot by 5 foot entryway deck, and a residential driveway. The camp is set back 75 feet from the normal high water mark of West Grand Lake, at least 50 feet from Bonney Brook Road, and at least 15 feet from side property boundary lines. Both Advisory Ruling AR 93-182 and Amendment A to Subdivision Permit 3117 outline the lot's land division and development history. The Commission's records indicate that the circa 1973-1974 camp, deck, and driveway were constructed on the lot without the required permit from the Commission.

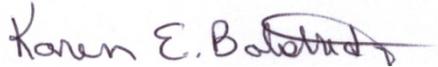
In 1998, Commission staff notified Cresswell of the violation(s) outlined above and negotiated a potential resolution. Staff provided Cresswell with an opportunity to resolve the violations administratively by applying for an after-the-fact building permit by completing the building permitting application process. Mr. Cresswell failed to supply a complete building permit application which, when acted upon by staff, could have brought the property into compliance.

Based on the nature of the violations associated with the above listed activities, this case has been placed on the Commission's inactive file list. This letter does not waive the Commission's legal authority to bring an enforcement action against you or any subsequent owner to resolve these violations. The Commission, however, does not currently anticipate taking an enforcement action to resolve these violations.

While your case has been placed on the inactive list, you may, however, wish to contact the Commission to officially resolve these alleged violations on your property. In Commission staff's experience, outstanding violations often become an issue when disclosed to future buyers or lenders, and certainly any outstanding violations will be reviewed by the Commission if you decide to further develop your property in the future.

If you have any questions or would like to resolve this further, please do not hesitate to contact Karen Bolstridge of the Downeast Regional Office at (207) 941-4052 or via e-mail at: karen.bolstridge@maine.gov.

Sincerely,



Karen E. Bolstridge  
Downeast Regional Representative  
Permitting and Compliance Division

xc: EC 97-035 File