



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: December 2, 2015
Re: Enforcement Cases EC 90-35 EC 97-46; Guy McCluskey and Donna LaForge, T17 R 3 WELS, Aroostook County

Background Information and Administrative History

Guy McCluskey and Donna LaForge currently lease an approximately 25,000 square feet (0.57 acre) lot with 100 feet of shorefrontage on Long Lake (Lots #68 and #68A) from Allagash Timberlands LP in Van Buren Cove, T17 R 3 WELS, Aroostook County. Until recently, Guildor LaForge was also a leaseholder and was included in the attached Settlement Agreement.

In 1982, Guildor LaForge, replaced a pre-Commission seasonal camp of unknown setbacks with a 14 foot by 48 foot mobile home and an attached 8 foot by 22 foot lake-side deck without obtaining a permit from the Commission. LaForge also installed an 8 foot by 10 foot storage shed on the lot without a permit. The 1982 mobile home was 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 lake-side deck was setback 36 feet from the normal high water mark of Long Lake. The 8 foot by 10 foot storage shed is setback 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.

In 1989, LaForge removed the 1982 mobile home with attached deck from the lot and replaced it with a 16 foot by 62 foot mobile home with an attached 16 foot by 31 foot lake-side deck. LaForge also removed the existing steel septic tank and replaced it with a 1000 gallon PVC septic tank. All these improvements were completed without prior permit approval from the Commission or Local Plumbing Inspector. The 1989 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.

On July 27, 1995, LaForge submitted an after-the-fact building permit application to the Commission seeking approval for the existing 1989 mobile home with lake side deck, the two existing storage sheds, and the existing combined sewage disposal system. With his application, LaForge submitted a design for a replacement combined sewage disposal system to be installed beyond the boundaries of their lease lot.

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 his failure to fully comply with the Commission’s minimum dimensional requirements pertaining to minimum set back distances from roads, property boundary lines, and waterbodies.

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.

In Summer of 2012, Guy McCluskey and Donna 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.

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 had been enlarged to an approximately 6,000 square feet gravel parking area that had not been properly stabilized. Staff also now have documentation that the 8 foot by 8 foot shed was constructed in 1965 and does not require a permit.

Applicable Statutes and Chapter 10 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.

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.

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.

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.

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 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.

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.

Violations

In summary, the following violations have been documented for this lot:

- A 16 foot by 62 foot replacement single-family dwelling was installed in 1989 without a permit. The dwelling is located 38 feet from Long Lake.
- A 16 foot by 31 foot lake-side deck was constructed without a permit. The deck is located 22 feet from Long Lake.
- Dwelling and deck are located closer to Long Lake than the prior dwelling and deck and do not meet the waterbody setback to the greatest extent possible;
- An 8 foot by 10 foot storage shed was constructed without a permit. The shed is located 71 feet from Long Lake.
- Approximately 5,500 square feet was filled and graded within 100 feet of Long Lake without a permit.

- Approximately 12,000 square feet was filled and graded within 250 feet of Long Lake of in excess of standards without a permit.
- At the time of inspection, not all of the filled and graded areas within 250 feet of Long Lake were promptly stabilized in accordance the standards.

Proposed Settlement

Staff have offered an Administrative Settlement Agreement (see attached) 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.

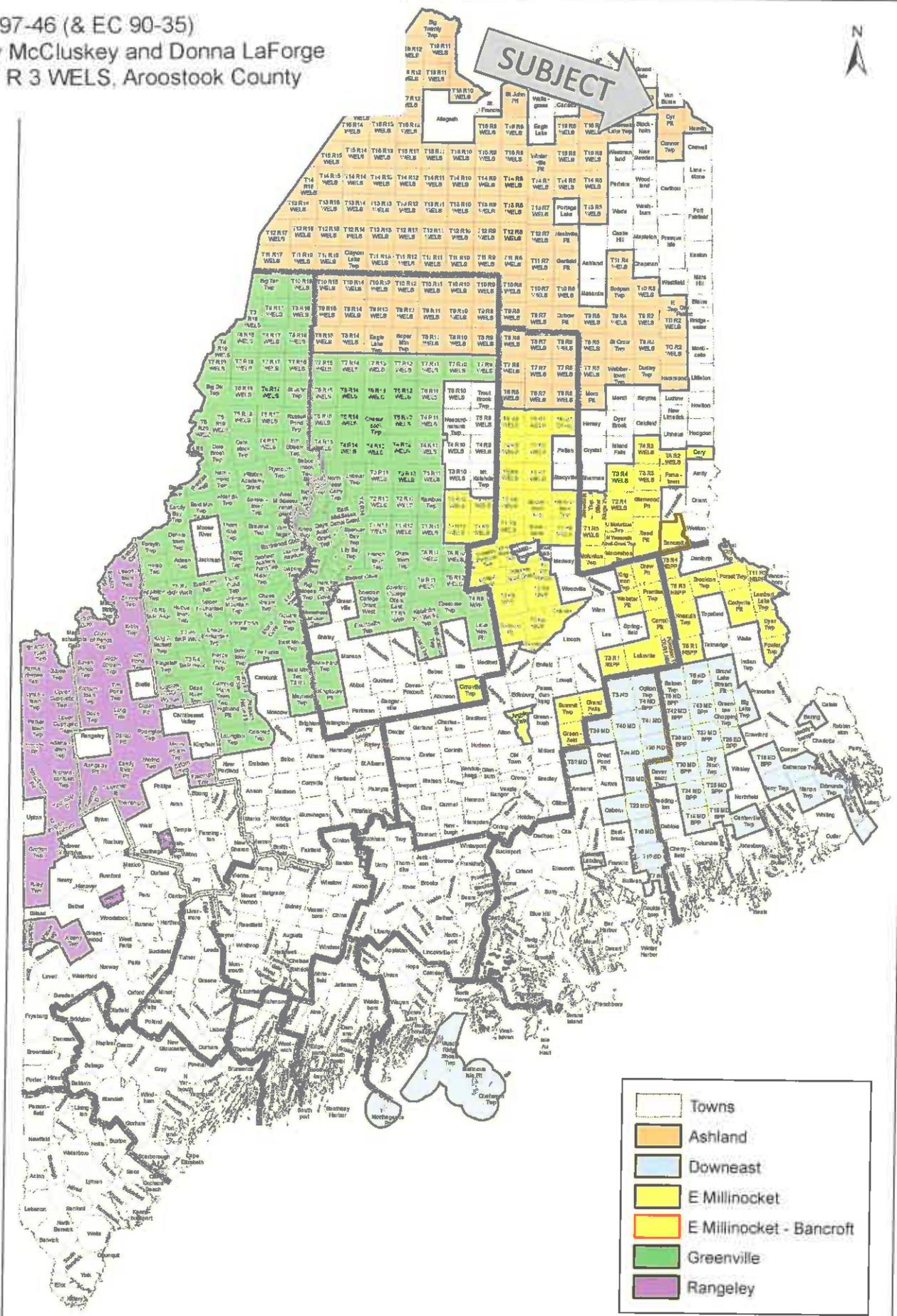
Staff has been unable to reach an agreement with McCluskey and LaForge and seeks guidance from the Commission on how to resolve this older enforcement case.

Enclosures:

EC 97-46 (& EC 90-35)
 Guy McCluskey and Donna LaForge
 T17 R 3 WELS, Aroostook County



SUBJECT →



- Towns
- Ashland
- Downeast
- E Millinocket
- E Millinocket - Bancroft
- Greenville
- Rangeley

EC 97-46 (& EC 90-35)
 Guy McCluskey and Donna LaForge
 T17 R 3 WELS, Aroostook County

Land Use Guidance Map

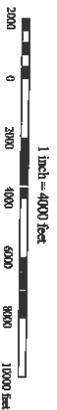
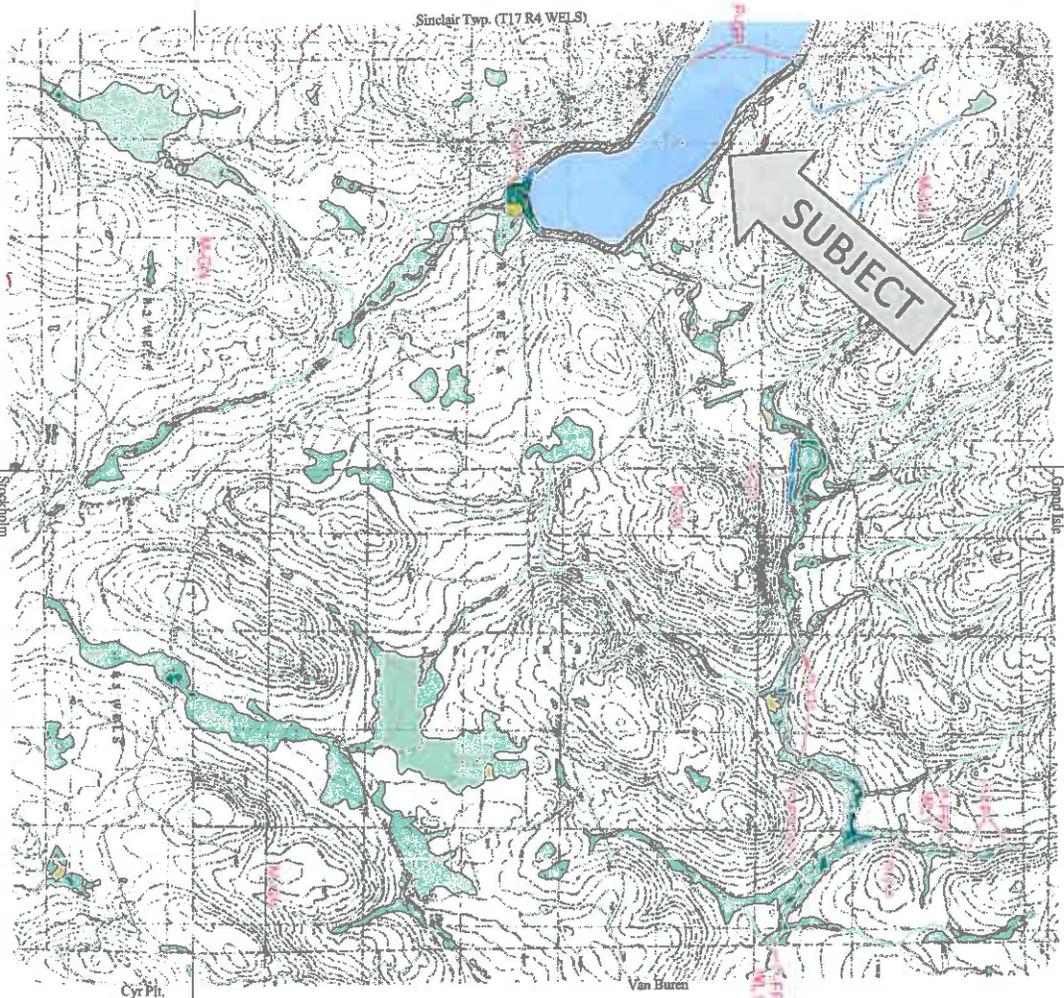
T17 R3 WELS

Aroostook County



Maine Department of Agriculture, Conservation and Forestry
 LAND USE PLANNING COMMISSION
 (207) 287-2631
<http://www.maine.gov/dec/dupc>

- Legend**
- Development Subdistricts**
- D-RS Residential
- Protection Subdistricts**
- P-FP Flood Prone
 - P-GP Great Pond
 - P-SL2 Significant Wetlands - Shrub-shrub
 - P-W11 Wetlands - Significant
 - P-W12 Wetlands - Shrub-shrub
 - P-W13 Wetlands - Forested



Management Subdistricts

- M-CN General

Water body

- Improved road
- Unimproved road
- Trail

Subdistrict boundary

or Zoning amendment

Areas designated as two or more protection zones are annotated with each zone, e.g. P-FP/W/W11, P-FP/S11, etc., where necessary.

Topographic base, roads and trails from U.S. Geological Survey 7.5-minute map series

For the purpose of simplicity, this map does not show the Wetland Protection Subdistricts for areas identified pursuant to Section 1016 K.2 and as beds of fish, wildlife and other water bodies, and freshwater wetlands within 25 feet of stream channels, which are nevertheless within P-W1 Subdistricts.

This map is a reduced version of the official Land Use Guidance Map. It is not certified to be a true and correct copy. Full size official LU/PC Land Use Guidance Maps are available from the Commission at its Augusta office. Potential applicants unsure of their zoning should request a full size map from the Augusta office.

- 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, 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 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
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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, LaForge and McCluskey/LaForge, jointly and severally, agree to:
 - A. Within 10 days of the effective date of this agreement, pay a civil penalty of five thousand eight hundred and fifty dollars (\$5,850). 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 June 15, 2015, 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 July 1, 2015, relocate the existing mobile home onto a new slab foundation or a nonpermanent foundation 27 feet east to a location 74 feet from Long Lake, 20 feet from Van Buren Cove East Side Road and at least 15 feet from side property lines. Remove and properly dispose of the concrete foundation under the existing mobile home in accordance with all state and federal solid waste disposal requirements. Stabilize and re-vegetate all areas of exposed soil in accordance with the Commission's "Guidelines for Vegetative Stabilization", a copy of which is attached. Prior to relocation of the mobile home, all property lines shall be identified and marked by the landowner, Allagash Timberlands, LP.
- D. By June 15, 2015, 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.
- E. By June 15, 2015, 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.
- F. The following restrictions on the use of the subject property: The existing 16 foot by 62 foot dwelling as constructed and relocated 74 feet from the normal high water mark of Long Lake, 20 feet from the Van Buren Cove East Side Road and 15 feet from the nearest side property boundary line may remain on the property in its relocated location as per Condition 11C above 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.
- G. The following conditions governing the conveyance of the subject property: LaForge and 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 LaForge and 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 LaForge and McCluskey/LaForge.
- H. The following actions to be taken by LaForge and 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, LaForge and 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 LaForge and McCluskey/LaForge arising from the violations described in Paragraphs 7 and 8 above.

Respondents

By: _____ Date: _____
Guildor LaForge

COUNTRY OF CANADA
Province of New Brunswick, ss.

Date: _____

Personally appeared the above named Guildor LaForge and acknowledged the foregoing to be his free act and deed.

Before me,

Notary Public

(Type or Print Name as Signed)

My Commission Expires: _____

By: _____ Date: _____
Guy McCluskey

COUNTRY OF CANADA
Province of New Brunswick, ss.

Date: _____

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

Before me,

Notary Public

(Type or Print Name as Signed)

My Commission Expires: _____

By: _____ Date: _____
Donna LaForge

COUNTRY OF CANADA
Province of New Brunswick, ss.

Date: _____

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

Before me,

Notary Public

(Type or Print Name as Signed)

My Commission Expires: _____

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