STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
194 MAIN STREET
EAST MILLINOCKET, MAINE 04430

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

# PERMIT

**BUILDING PERMIT BP15200 (AFTER-THE-FACT); EC 2009-50**
**BY SPECIAL EXCEPTION**

The staff of the Maine Land Use Regulation Commission, after reviewing the application and supporting documents submitted by Richard Tetlow for Great Ponds Permit GP 3397, finds the following facts:

1. Applicant: Richard Tetlow
   445 North Guilford Rd.
   Monson, ME 04464

2. Date of Completed Application: January 14, 2015

3. Location of Proposal: Orneville Township, Piscataquis County
   Lot #43, 43.2, 44, & 44.2 on Plan 06, Map PI082

4. Zoning: (D-RS) Residential Development Subdistrict
   (P-FP) Flood Prone Protection Subdistrict by Virtue of Section 10.23, C, 2 of the Commission's Land Use Districts and Standards

5. Lot Size: 0.52 Acres (owned)

6. Affected Waterbody: Boyd Lake

   The Commission has identified Boyd Lake as a resource class 1B, management class 5, relatively developed, relatively accessible waterbody with significant fisheries, cultural and physical resources.

7. Principal Building: Existing Residential Dwelling Unit (25 ft. by 23 ft. by 24 ft.)
   Existing Attached Lakeside Porch (25 ft. by 8 ft.)
   After-the-Fact Second-Story Height Expansion with Expanded Loft (25 ft. by 31 ft.by 24 ft.)

8. Accessory Structures: Existing Shed (8 ft. by 10 ft)

9. Sewage Disposal: Existing Complete Non-engineered System with Replacement System Variance

**Administrative History**:

10. The applicant's 0.52 acre lot with approximately 100 feet of shore frontage was historically developed with a 1 ½ -story 25 foot by 23 foot pre-Commission seasonal camp with attached one-story 25 foot by 8 foot porch located 25 feet from the normal high water mark of Boyd Lake and is served by a combined sewage disposal system. The lot is further developed with an 8 foot by 10 foot shed located 75 feet from the normal high water mark of Boyd Lake, 25 feet from the access road, and greater than 15 feet from the nearest property bounday line.

11. In 2006, the applicant constructed, or caused to be constructed, a 25 foot by 31 foot second-story addition to the dwelling and attached porch located 25 feet from the normal high water mark of Boyd Lake without prior approval from the Commission. In addition, the applicant constructed a 9 foot by 15 foot deck located 4.5 feet over the normal high water mark of Boyd Lake, including a wooden retaining wall/cement support structure located 1 foot below the normal high water mark of the lake; constructed a stone patio within 4 feet of the normal high water mark, and filled and graded within 100 feet of the normal high water mark without prior approval from the Commission and in excess of standards. [Reference: Enforcement Case EC 2009-50; Resolved with this permit and Great Ponds Permit GP 3397].

12. July 24, 2014, Commission staff issued Great Ponds Permit GP3397 to Richard Tetlow, granting approval to remove the unauthorized deck with retaining wall, to remove the unauthorized stone patio from the shoreline of Boyd Lake, and to stabilize the shoreline with the installation of 16 linear feet of riprap along the shoreline and planting native shrubs at the top of the bank. The proposed remedial work was completed in September of 2014.

**Proposal:**

13. The applicant now seeks after-the-fact approval for the second-story expansion in height of the dwelling unit and attached porch. The raised roof with expanded loft area over the existing structure is located 25 feet from from the normal high water mark of Boyd Lake and is less than 25 feet in height from original grade to the highest point of the structure.

14. Although the Commission's Land Use Guidance Map for Orneville Township identifies the applicants' lot as being within a (D-RS) Residential Development Subdistrict, according to the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map (FIRM) for Orneville Township, Piscataquis County, the applicant's lot is located entirely within Zone A, an an area of 100-year flood (reference the National Flood Insurance Act of 1968 P.L. 90-48, as amended). The Base Flood Elevation for Boyd Lake has been determined to be 303 feet. State of Maine, Licensed Professional Land Surveyor #2119 has determined that the elevation of the lowest grade next to the proposed structure is 306.0 feet NGVD and that the top of the bottom floor (including basement, crawlspace, or enclosure floor) will be elevated to 308.1 feet NGVD.

**Review Criteria**:

15. Under provisions of Section 10.23,C,2 of the Commission's Land Use Districts and Standards, the Flood Prone Protection Subdistrict is described as: areas located within the 100-year frequency floodplain, also known as areas of special flood hazard, as identified by the Commission after consideration of relevant data including, without limitation, areas determined to be flood prone by state or federal agencies, including the Flood Insurance Studies and

accompanying Flood Insurance Rate Maps or Flood Hazard Boundary Maps prepared by the Federal Emergency Management Agency, historical data, and the National Cooperative Soil Survey.

The areas identified by FEMA as areas of special flood hazard (Zones A, AE, A1-30, VE) on Flood Insurance Rate Maps or Flood Hazard Boundary Maps for townships, plantations, or towns qualify as flood prone areas appropriate for protection within this subdistrict. The Commission adopts the FEMA maps as listed in Appendix E, and a note on the Official Land Use Guidance Map shall refer to maps so adopted. In any case where the boundaries of the P-FP subdistrict on the Commission map differ from the boundaries of the FEMA zones, the FEMA boundaries shall apply. The FEMA zones shall be regulated according to the provisions of the P-FP subdistrict.

16. Pursuant to Section 10.23,C,3,d,(4) of the Commission's Land Use Districts and Standards, residential, single family dwellings, including their reconstruction, relocation, or replacement; new construction, reconstruction or replacement of a permanent foundation; substantial improvement or accessory structures may be may be allowed within a (P-FP) Flood Prone Area Protection 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.

18. Pursuant to Section 10.25,T,2 of the Commission's Land Use Districts and Standards, 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.

19. Pursuant to Section 10.25,T,2,f of the Commission's Land Use Districts and Standards, any residential structure or substantial improvement other than normal maintenance and repair shall have the lowest floor of each structure (including the basement) elevated to at least one foot above the Base Flood Elevation (BFE) at that location.

20. Pursuant to Section 10.11,B,1 of the Commission's Land Use Districts and Standards, 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. Section 685-B(4) and demonstrate that the project will not adversely affect surrounding uses and resources and 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.

21. Pursuant to Section 10.11,C,1 of the Commission's Land Use Districts and Standards, a permit is required for the expansion of a nonconforming structure, except as provided in Section 10.27,P. In addition to meeting permit requirements, expansions must also comply with the following limitations. These limitations do not apply to water dependent uses as defined in Section 10.02.

    a. **Certain Expansions Prohibited.** If any portion of a structure is located within 25 feet, horizontal distance, of the normal high water mark of a water body, expansion of that portion of the structure, which includes an increase in height or an increase in floor area, is prohibited. That portion beyond 25 feet may be expanded provided the size limitations in Section 10.11, C,1,b are met.

    b. **Size of Structures Near Water Bodies Limited.** The maximum size of expansions of nonconforming structures is limited within 100 feet, horizontal distance, of the normal high water mark of bodies of standing water 10 acres or greater in size.

    Legally existing, principal and accessory structures located within the areas described in Section C,1,b,(1) and (2) above may be expanded subject to the other requirements of this section, provided that lot coverage limitations and other applicable land use standards are met. The maximum height of all structures within these areas shall be 25 feet, or existing structure height, whichever is greater. The maximum combined footprint for all structures within 100 feet of Boyd Lake may not exceed 1,500 square feet.

22. The facts are otherwise as represented in Building Permit application BP 15200, Enforcement Case EC 09-50, and supporting documents

**Based upon the above Findings, the staff concludes that:**

1. In accordance with the provisions of Section 10.23,C,3,d,(4) of the Commission's Land Use Districts and Standards , the after-the-fact expansion in height of the applicant's existing dwelling unit would be allowed in the FEMA Zone A as a special exception in that: the dwelling unit is an existing pre-Commission structure, so no alternative site is reasonably available to the applicant, there are other residential uses in the area with which the dwelling is compatible, and other conditions, such as the development requirements of Section 10.25,T,2 and the elevation requirements of Section 10.25,T,2,f are proposed to be met.

2. In accordance with the provisions of Section 10.25,T,2,f of the Commission's Land Use Districts and Standards, the lowest floor of the proposed structure would be elevated to at least 1 foot above the Base Flood Elevation of Boyd Lake. The proposal would meet all the applicable requirements set forth in Section 10.25,T.

3. In accordance with Section 10.11,B,1 of the Commission's Land Use Districts and Standards, the proposal would not adversely affect surrounding uses and resources, would not increase the combined footprint of structures within 100 feet of the lake and would not increase the extent of nonconformance.

4. In accordance with the provisions of Section 10.11,C,1 of the Commission's Land Use Districts and Standards, the expansion in height of the applicant's dwelling unit is located beyond 25 feet of the normal high water mark of Boyd Lake, is less than 25 feet in height, and the maximum

combined footprint for all structures within 100 feet of the lake is 855 square feet. The proposal would meet all the applicable requirements set forth in Section 10.11,C,1.

5. If carried out in compliance with the Conditions below, the proposal will meet the Criteria for Approval, Section 685-B(4) of the Commission's Statutes, 12 M.R.S.A.

**Therefore, the staff approves the application of Richard Tetlow for the after-the-fact expansion in height of the existing dwelling unit and porch with the following conditions:**

1. Construction activities authorized in this permit must be substantially started within 2 years of the effective date of this permit and substantially completed within 5 years of the effective date of this permit. If such construction activities are not started and completed within this time limitation, this permit shall lapse and no activities shall then occur unless and until a new permit has been granted by the Commission.

2. This permit is dependent upon and limited to the proposal as set forth in the application and supporting documents, except as modified by the Commission in granting this permit. Any variation is subject to prior review and approval of the Maine Land Use Planning Commission. Any variation from the application or the conditions of approval undertaken without approval of the Commission constitutes a violation of Land Use Planning Commission law.

3. The permitted structure must not exceed 25 feet in height as measured from the peak of the roof to the lowest point of the structure (including the foundation) at the original grade along the downhill side. The top of the lowest floor, including basement, must be elevated to at least one foot above the Base Flood Elevation of 303.0 feet NGVD 1929.

4. The permitted structure must 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.

5. The permitted structure must use construction materials that are resistant to flood damage; use construction methods and practices that will minimize flood damage; and 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.

6. The permitted structure must have openings in at least two different walls having a total net area of not less than one square inch for every square foot of the enclosed area, must have the bottom of all openings no higher than one foot above the lowest grade. The openings must permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means. The shed must also have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Area of Special Flood Hazard.

7. The scenic character and healthful condition of the area covered under this permit must be maintained. The area must be kept free of litter, trash, junk cars and other vehicles, and any other materials that may constitute a hazardous or nuisance condition.

8. All exterior lighting must be located and installed so as to illuminate only the target area to the extent possible. Exterior lighting must not produce a strong, dazzling light or reflection beyond lot lines onto neighboring properties, water bodies, or roadway so as to impair driver vision or to create nuisance conditions.

9. Nothing in this permit shall be construed to release the permittee from any liability or responsibility arising from any violations, including Enforcement Case EC 2009-50, or to be considered a waiver of the authority of the Commission or the State to fully pursue or prosecute such violations.

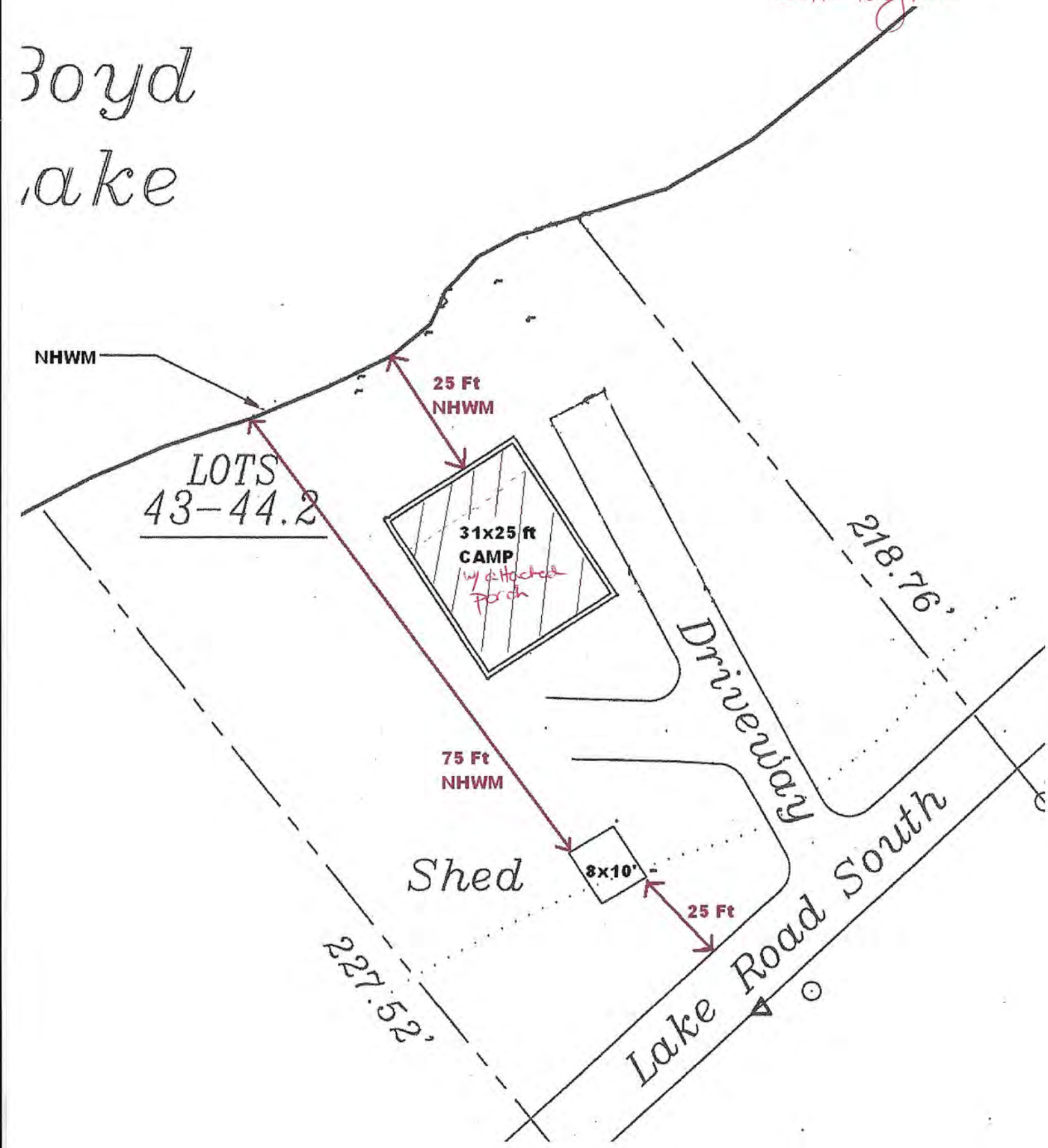
This permit is approved only upon the above stated conditions and remains valid only if the permittee complies with all of these conditions. In addition, any person aggrieved by this decision of the staff may, within 30 days, request that the Commission review the decision.

DONE AND DATED AT EAST MILLINOCKET, MAINE, THIS 15th DAY OF JANUARY, 2015.

By: Debra A. Kaczynski

*for* Nicholas D. Livesay, Executive Director

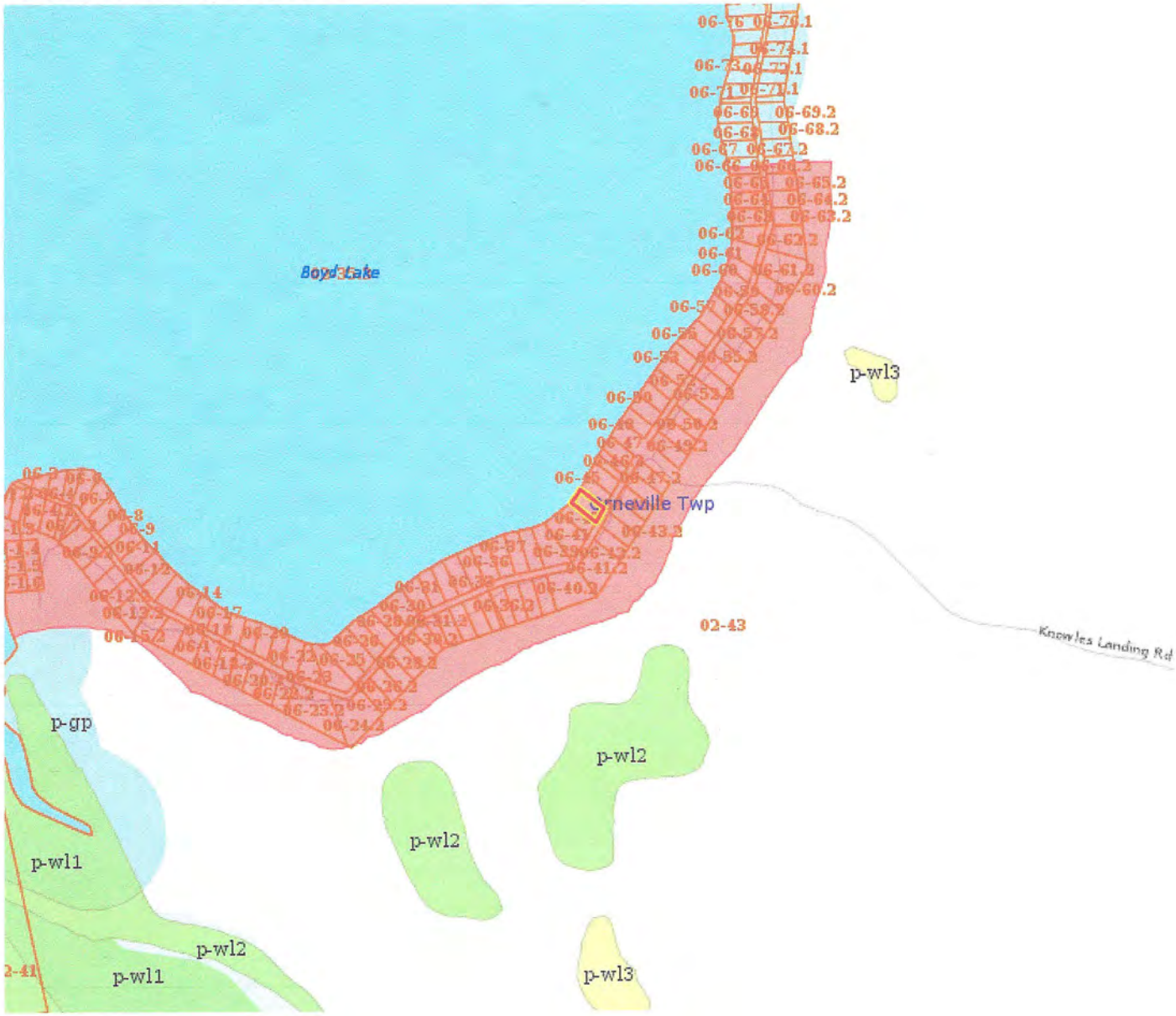
BP 15200
Site Diagram

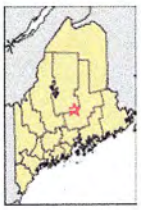


# Maine Department of Agriculture, Conservation and Forestry - Land Use Planning Commission

## Zoning and Parcel Viewer

**Map generated: Monday, July 7, 2014**



0 480 960 1440 1920 2400 ft

| Parcel number | Town/Geocode | Town Code | Plan | Lot | Zones Intersected | LUPC Region | Contact number |
|---|---|---|---|---|---|---|---|
| 1 | Orneville Twp/21821 | PI082 | 06 | 43 | d-rs | DOWNEAST | (207) 941-4052 |
| 2 | Orneville Twp/21821 | PI082 | 06 | 43 | d-rs | DOWNEAST | (207) 941-4052 |