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 BP 15361
ENFORCEMENT CASE EC 2015-19

The Staff of the Maine Land Use Regulation Commission, after reviewing the application and supporting documents submitted by Chantal Shaw for Building Permit BP 15361, finds the following facts:

1. Applicant: Chantal Shaw
   c/o PO Box 525
   Millinocket, ME 04462

2. Agent: Edwin Shaw
   PO Box 525
   Millinocket, ME 04462

3. Date of Completed Application: May 27, 2015

4. Location of Proposal: Indian Purchase Number 3 Twp., Penobscot County
   Lots 35 & 36 on Plan 04
   (formerly GNP Lease #3052, Lots 35 & 36)

5. Zoning: (D-RS) Residential Development Subdistrict

6. Lot Size: 0.96 Acres (owned)

7. Principal Building: Existing One Story Dwelling (25 ft. by 18 ft.)
   w/ Attached Enclosed Porch (15 ft. by 8.5 ft.)

   Existing One Story Addition (20 ft. by 12 ft.)
   w/ Attached Bathroom (5 ft. by 5 ft.)

8. Accessory Structures: Existing Pre-Commission Shed (3ft. by 7 ft.)
   Existing Unauthorized Shed (10 ft. by 12 ft)

9. Sewage Disposal: Existing Wastewater Disposal System of Unknown Size or Design

10. Affected Waterbody: Smith Pond

    The Commission has identified Smith Pond as a management class 5, resource class 2, relatively accessible and developed waterbody, with a significant fishery.

Background

11. The applicant's lot with 150 feet of shore frontage on Smith Pond has historically been developed with a pre-Land Use Regulation Commission 30 foot by 38.5 foot (over-all dimension) seasonal camp constructed in 1942 and 1943, a 3 foot by 7 foot shed, and a 22 foot by 22 foot shed, both pre-Commission. The dwelling is set back approximately 36 feet from the normal high water mark of Smith Pond, 59 feet from the access road, and 36 feet from the nearest side property boundary line. The 3 foot by 7 foot shed is setback one (1) foot from Smith Pond, greater than 50 feet from the access road, and 15 feet from the nearest side property boundary line. The 22 foot by 22 foot shed was removed from the lot at an unknown date.

12. On May 20, 2015, during a pre-application site visit, Commission staff observed a 12 foot by 10 foot shed setback 67 feet from the normal high water mark of Smith Pond, 59 feet from the access road, and greater than 15 feet from the nearest side property boundary line had been constructed without prior authorization and in excess of the Commission's minimum waterbody setback standard. [*Reference: Enforcement Case EC 15-19, Active*]

Proposal

13. The applicant now proposes to construct an 8.5 foot by 10 foot attached lakeside deck onto the existing dwelling and to reconstruct the existing 8.5 foot by 15 foot enclosed porch. Both the proposed deck and porch would be set back 36 feet from the normal high water mark of Smith Pond, greater than 50 feet from the access road, a minimum of 15 feet from property boundary lines, and will be approximately 14 feet in height.

14. The applicant further seeks After-the-Fact approval for the existing 12 foot by 10 foot shed proposed to be relocated to 106 feet from the normal high water mark of Smith Pond, 20 feet from the access road, and a minimum of 15 feet from the nearest side property boundary lines.

15. The total combined footprint of all existing and proposed structures within 100 feet of Smith Pond will be 948.5 square feet.

Commission Review Criteria

16. 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 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:

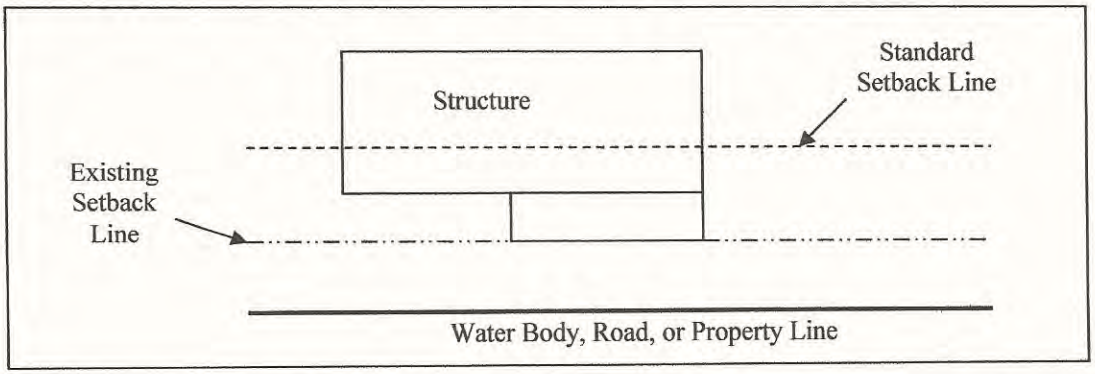
    a. the project will not adversely affect surrounding uses and resources; and

    b. there is no increase in the extent of nonconformance, except as provided in Section 10.11,B,9 or in instances where a road setback is waived by the Commission in order to increase the extent of conformance with a water body setback.

17. Pursuant to Section 10.11,C,1,b of the Commission's Land Use Districts and Standards, an expansion to a legally existing, nonconforming structure where the expansion is set back 36 feet from the normal high water mark of waterbodies such as Smith Pond, shall not exceed the

maximum combined footprint of 1,000 square feet for all structures not meeting the 100 foot waterbody setback. The maximum height of all structures within these areas shall be 25 feet, or existing structure height, whichever is greater.

18. Pursuant to Section 10.11,B,2 of the Commission's Land Use Districts and Standards, Extent of Nonconformance with Respect to Setbacks, where legally existing, nonconforming structures do not meet these setbacks, an existing setback line will be established. The existing setback line will run parallel to the water body, road or property boundary at a distance equal to the closest point of the existing structure (including attached decks or porches) to the feature from which the setback is established. This is shown graphically below in Figure 10.11,B-1.



Subject to the other requirements in this section, a nonconforming structure may be expanded up to the existing setback line without being considered to be more nonconforming than the original structure. Expansions between the existing setback line and the water body, road or property boundary will be considered to increase nonconformity, and will not be allowed, except as provided in Section 10.11,B,9, Property Line Set Backs.

19. Pursuant to Section 10.11,B,6 of the Commission's Land Use Districts and Standards, to allow a structure to become either conforming or less nonconforming to the water body setback, the Commission may reduce the road setback to no less than 20 feet in cases of reconstruction or relocation of legally existing structures or construction of new accessory structures on developed, legally existing nonconforming lots.

20. Pursuant to Section 10.11,C,5 of the Commission's Land Use Districts and Standards, new, detached accessory structures associated with pre- 1971 residences and operating farms are allowed without a permit if they meet all setbacks, do not cause lot coverage requirements to be exceeded and otherwise conform with the Commission's rules, except that new accessory structures in areas of special flood hazard shall be regulated in conformance with the requirements of Section 10.23,C and must meet the applicable development standards in 10.25,T, Activities in Flood Prone Areas, and all other applicable statutory and regulatory requirements. Permits are required for all other new detached accessory structures.

21. Pursuant to Sub-Chapter III, Section 10.26,D of the Commission's Land Use Districts and Standards, the minimum setbacks for structures include: 100 feet from the nearest shoreline 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 the side and rear property lines.

22. The facts are otherwise as represented in Building Permit application BP 15361, Enforcement Case EC 2015-19, and supporting documents.

Based upon the above Findings, the staff Concludes that:

1. In accordance with Section Section 10.11, B, 1 of the Commission's Land Use Districts and Standards, the proposal would not have an adverse effect on the surrounding uses and resources in that the construction of the lakeside deck and reconstruction of the existing enclosed porch are attached to an existing structure, will be 25 feet or less in height, and would present no visible increase toward the lake. There would be no increase in the extent of non-conformance in that the existing dwelling with attached lakeside deck and enclosed porch will be no closer to the lake than the existing structure.

2. In accordance with Section 10.11,C,1,b and Section 10.11,B,2 of the Commission's Land Use Districts and Standards, the maximum combined footprint of all existing and proposed structures not meeting the 100 foot waterbody setback is 948.5 square feet, the maximum height of all structures within this area is proposed to be approximately 14 feet, and would be no closer to the waterbody than the existing structure.

3. In accordance with Section 10.11,B,6, Section 10.11,C,5, and Sub-Chapter III, Section 10.26,D of the Commission's Land Use Districts and Standards, the proposed relocation of the 12 foot by 10 foot shed would meet the waterbody and property line setback requirements in that the structures will be located greater than 100 feet from Smith Pond and a minimum of 15 feet from property boundary lines. The proposed relocation of the shed would not meet the 50 foot road setback requirement, but would allow the structure to become either conforming to the water body setback by reducing the road setback to no less than 20 feet.

4. In accordance with Sub-Chapter III, Section 10.26,D of the Commission's Land Use Districts and Standards, the proposed relocation of the 8 foot by 10 foot and 8 foot by 12 foot sheds would meet the waterbody, road and property line setback requirements in that the structures will be located greater than 100 feet from Plunkett Pond, a minimum of 50 feet from the access road, and a minimum of 15 feet from property boundary lines.

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 Brian & Aldina Cote with the following Conditions:

1. ***At least one week prior to commencing the permitted activities**, the permittee or the designated agent must contact the Commission staff and notify them of the estimated date construction work will start. Notice may be provided in writing, in person, by email, or by calling. If you leave or send a message, please include your full name, telephone number, permit number, and the date the work will start.*

2. 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.

3. 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.

4. Temporary and permanent sedimentation control measures must be implemented to effectively stabilize all areas of disturbed soil and to catch sediment from runoff water before it leaves the construction site so that sediment does not enter water bodies, drainage systems, water crossings, wetlands or adjacent properties. Clearing and construction activities, except those necessary to establish sedimentation control devices, shall not begin until all erosion and sedimentation control devices (including ditches, culverts, sediment traps, settling basins, hay bales, silt fences, etc.) have been installed and stabilized. Once in place, such devices shall be maintained to ensure proper functioning.

5. Effective, temporary stabilization of all disturbed and stockpiled soil must be completed at the end of each work day. All temporary sedimentation and erosion control devices shall be removed after construction activity has ceased and a cover of healthy vegetation has established itself or other appropriate permanent control measures have been effectively implemented. Permanent soil stabilization shall be completed within one week of inactivity or completion of construction.

6. 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.

7. 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.

8. The permittee shall secure and comply with all applicable licenses, permits, authorizations, and requirements of all federal, state, and local agencies including but not limited to: Air and Water Pollution Control Regulations; Subsurface Wastewater Disposal System approval from the Local Plumbing Inspector and/or Maine Department of Health and Human Services, Subsurface Wastewater Program; and the Maine Department of Transportation, Driveway Entrance Permit, a physical E-911 address from your County Commissioner's Office.

9. **By August 30, 2015, the existing 12 foot by 10 foot shed must be relocated to a location greater than 100 feet from Smith Pond, a minimum of 20 feet from the access road, and a minimum of 15 feet from property boundary lines. [*Reference Enforcement Case EC 2015-19, Active*]**

10. **The 8.5 foot by 15 foot enclosed porch and the 8.5 foot by 10 foot lakeside deck authorized under this permit must be set back a minimum of 36 feet from the normal high water mark of Smith Pond, greater than 50 feet from the access road, and 15 feet from other property boundary lines.**

11. **To protect the scenic quality of Smith Pond, the enclosed porch 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.**

12. **Nothing in this permit shall be construed to release the permittee(s) from any liability or responsibility arising from any violation, including Enforcement Case EC 2015-19, or to be considered a waiver of the authority of the Commission or the state to fully pursue or prosecute such violations.**

13. Once construction is complete, the permittees shall submit a self-certification form, notifying the Commission that all conditions of approval of this permit have been met. The permittee shall submit all information requested by the Commission demonstrating compliance with the terms of this permit.

14. All conditions of previously issued Commission permits shall remain in effect, except as specifically modified by this permit. For parcels that are part of a Commission-approved subdivision, all conditions of the subdivision permit as they pertain to the permittee's parcel shall remain in effect

This permit is approved upon the proposal as set forth in the application and supporting documents, except as modified in the above stated conditions, and remains valid only if the permittees comply with all of these conditions. Any variation from the application or the conditions of approval is subject to prior Commission review and approval. Any variation undertaken without Commission approval constitutes a violation of Land Use Planning Commission law. 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 27th DAY OF MAY, 2015.

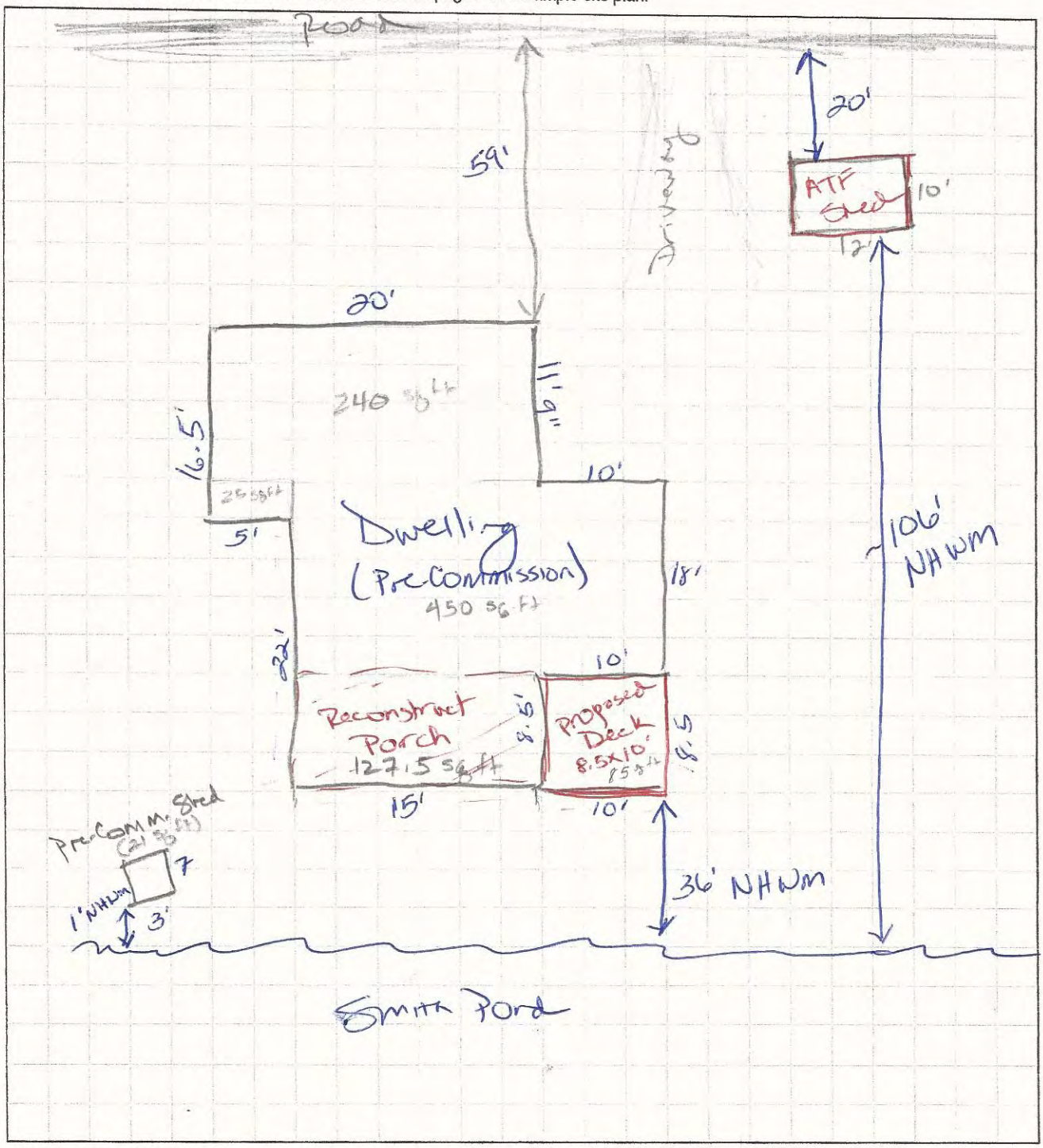
By: Debra A. Kaczynski
for Nicholas Livesay, Executive Director

For office use:
48190 Tracking No. BP 15361 Permit No.

Proposed/After

EXHIBIT C: SITE PLAN

Prepare a bird's-eye view site plan that shows your entire property and includes all the elements described for **Exhibit C** in the instructions on page ii. Do not use colors. Refer to the instructions on page ii for a sample site plan.



Notes/Legend:

Proposed: 948.5 sq feet w/in 75' of NHWM

RECEIVED
MAY 27 2015
LUPC - MILLINOCKET

0-25 = 21 sq ft
25-50 = 350 sq ft
50-75 = 577.5 sq ft