



STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
43 LAKEVIEW STREET
GREENVILLE, ME 04441

AMANDA E. BEAL
COMMISSIONER

STACIE R. BEYER
ACTING EXECUTIVE DIRECTOR

Memorandum

To: LUPC Commissioners
CC: Stacie R. Beyer, Acting Executive Director
From: Debra Kaczowski, Enforcement Coordinator
Ruby Goodmen, Regional Representative
Date: December 7, 2022
Re: Proposed Administrative Settlement Agreement for Enforcement Case EC 2022-43,
MCR Properties, LLC, Beaver Cove Twp., Piscataquis County

Attached is a staff recommendation for an Administrative Settlement Agreement for Enforcement Case EC 2022-43 with MCR Properties, LLC (MCR) for violations associated with its property on Moosehead Lake in Beaver Cove Twp., Piscataquis County, Maine. The property is further identified as part of Maine Revenue Service Map PIP01, Plan 01, Lots 1.1 and 1.2 (the subject parcel).

On June 30, 2022, staff of the Maine Land Use Planning Commission (Commission) conducted an inspection of the subject property. The site inspection revealed that MCR removed or caused the removal of vegetation within an approximate 14-21 foot wide by 100 foot long cleared area located 0 feet of the normal high water mark of Moosehead Lake in violation of the Commission's rules and regulations and the conditions of approval for Building Permit BP 16923. This removal of vegetation resulted in a cleared opening in the forest canopy greater than 250 square feet in size and within 100 feet of Moosehead Lake. In addition, MCR graded and removed, or caused the grading and removal of topsoil within a 14 foot wide area between 0 and 20 feet of the lake, with no erosion control measures in place and in violation of the Commission's Filling and Grading Standards and the conditions of approval for Building Permit BP 16923. A review of the Commission's records indicates that MCR did not first obtain a permit for this development.

The activities described above are in violation of Maine Law 12 M.R.S., the Commission's Rules and Standards, Chapter 10 *Land Use Districts and Standards*, and the Conditions of Build Permit BP 16923 (see Attachment C – Proposed Administrative Settlement Agreement).



This proposed Agreement requires MCR to pay a civil penalty of \$6,150.00, pay to record the Agreement in the Piscataquis County Registry of Deeds, submit a revegetation plan prepared with and signed by a qualified professional, and reestablish a vegetative buffer strip within 100 feet of Moosehead Lake.

Although MCR has not indicated an unwillingness to sign the Agreement, staff has not received a copy of the Agreement signed by MCR as of the date of this memo. Staff recommend that the Commission direct staff to continue settlement negotiations with MCR for 30 days. If the Settlement Agreement is not signed within 30 days, staff request the Commission allow the matter to be referred to the Office of the Attorney General for enforcement in court.

Attachments:

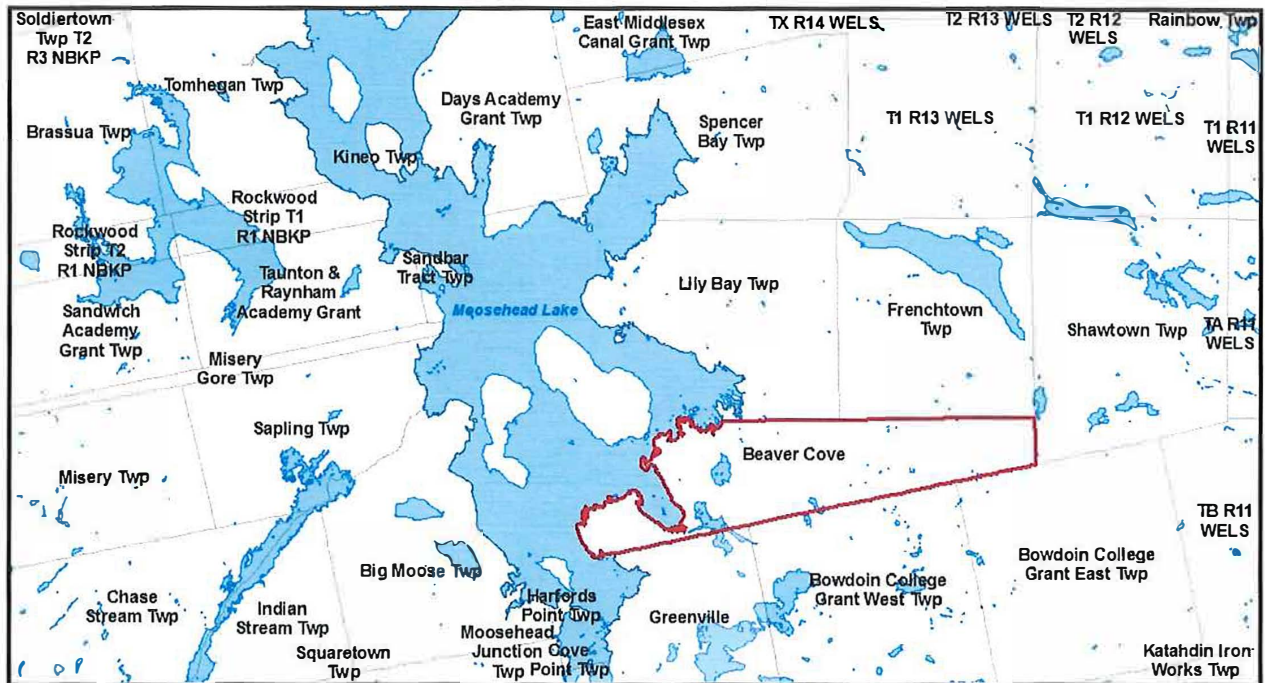
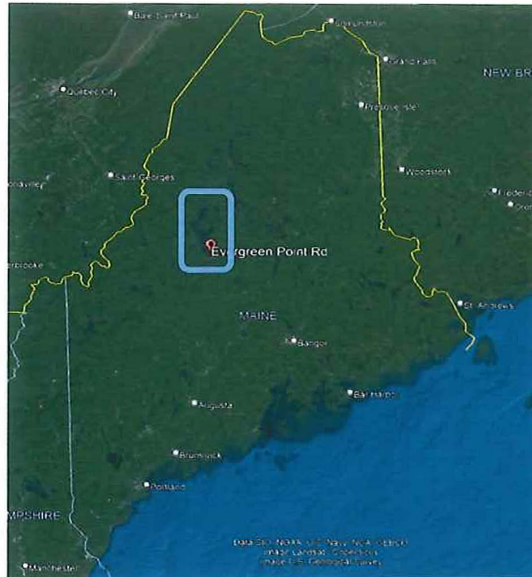
Attachment A: Location Maps

Attachment B: Site Photographs

Attachment C: Proposed Administrative Settlement Agreement

ENFORCEMENT CASE EC 2022-43
MCR Properties, LLC, Beaver Cove Plt., Piscataquis County

Attachment A
Location Maps



ENFORCEMENT CASE EC 2022-43
MCR Properties, LLC, Beaver Cove Plt., Piscataquis County

Attachment B
Site Photographs

10/20/2021





ENFORCEMENT CASE EC 2022-43
MCR Properties, LLC, Beaver Cove Plt., Piscataquis County

Attachment C
Proposed Administrative Settlement Agreement



JANET MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

AMANDA BEAL
COMMISSIONER

STACIE R. BEYER
ACTING EXECUTIVE DIRECTOR

ADMINISTRATIVE SETTLEMENT AGREEMENT

In the Matter of

MCR Properties, LLC)	STATE OF MAINE
369 US Route 1 Suite 103)	Land Use Planning Commission
Freeport, ME 04032)	(Enforcement Case EC 2022-43)

This Administrative Settlement Agreement (hereinafter the "Agreement") between MCR Properties, LLC (hereinafter "MCR") and the Maine Land Use Planning Commission (hereinafter the "Commission") is entered into pursuant to 12 M.R.S. § 685-C(8) and the Commission's *Compliance and Enforcement Response Policy* (last revised, April 5, 2013).

MCR 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. **Respondent:** The respondent is MCR Properties, LLC, a Maine Limited Liability Company with a place of business in Freeport, Maine.
3. **Location:** The violations that are the subject of this agreement occurred on real estate located in Beaver Cove, Piscataquis County, Maine and identified as part of Maine Revenue Service Map PIP01, Plan 01, Lots 1.1 and 1.2 (the subject parcel). The subject parcel is further described in a deed dated July 30, 2021, from Birch Point Properties, LLC to MCR Properties, LLC, recorded at the Piscataquis County Registry of Deeds in Book 2788, Page 36, excepting a portion of the premises described in a deed from MCR Properties, LLC to Burnt Jacket Properties, LLC dated February 15, 2022 and recorded in the Piscataquis County Registry of Deeds in Book 2835, Page 115 and in a second deed dated September 29, 2021, from Cove Point, LLC to MCR Properties, LLC and recorded in the Piscataquis County Registry of Deeds in Book 2805, Page 85. The combined 5.33 acre subject parcel has approximately 662.79 feet of shore frontage on Moosehead Lake and is within a Great Ponds Protection Subdistrict (P-GP) and General Management Subdistrict (M-GN).
4. **Zoning:** Great Pond Protection Subdistrict (P-GP)
General Management Subdistrict (M-GN)
5. **Affected Waterbody:** Moosehead Lake



Pursuant to Appendix C to the Commission's *Land Use Districts and Standards*, 01-672 C.M.R. 10 (last revised March 29, 2022) (hereinafter "Chapter 10"), the Commission has identified Moosehead Lake as a resource class 1A, management class 7, relatively accessible, relatively developed lake of statewide significance with outstanding fisheries, wildlife, scenic, botanic, cultural, and physical resources. Moosehead Lake is greater than 10 acres in size.

6. **Description of Activities:** MCR removed or caused the removal of vegetation within an approximate 14-21 foot wide by 100 foot long cleared area located 0 feet of the normal high water mark of Moosehead Lake in violation of the Commission's rules and regulations and the conditions of approval for Building Permit BP 16923. This removal of vegetation resulted in a cleared opening in the forest canopy greater than 250 square feet in size and within 100 feet of Moosehead Lake. In addition, MCR graded or caused the grading and removal of topsoil within a 14 foot wide area between 0 and 20 feet of the lake, with no erosion control measures in place and in violation of the Commission's Filling and Grading Standards and the conditions of approval for Building Permit BP 16923. A review of the Commission's records indicates that MCR did not first obtain a permit for this development.
7. **Administrative History:**
 - A) On March 30, 2022 Building Permit BP 16923 was issued to MCR Properties authorizing the construction of two 36 foot by 55 foot single-family residential dwellings both with a 4 foot by 24 foot bump-out, a 36 foot by 28 foot detached garage, a 12 foot by 200 foot driveway, and the installation of two combined subsurface wastewater disposal systems. Both dwellings and detached garages, all on permanent foundations, would be located a minimum of 100 feet from the normal high water mark of Moosehead Lake, a minimum of 50 feet from Evergreen Point Road, and a minimum of 15 feet from other property boundary lines.
 - B) On June 30, 2022, while in the vicinity of the subject property, staff visually observed a cleared opening on MCR property within the 100 foot vegetative buffer of Moosehead Lake. Staff were met by Michael Martin, who identified himself as one of the property owners, and allowed staff to conduct an inspection.
 - C) On August 31, 2022, Amendment A to Building Permit 16923, was issued to MCR Properties authorizing the relocation of the permitted garage to the northwest side of the combined parcels. The dimensions of the garage were also revised from 36 foot by 28 foot to 40 foot by 22 foot.
 - D) On September 20, 2022, the Commission staff issued a Notice of Violation (NOV) to MCR requesting corrective actions including the immediate installation of erosion and sedimentation control measures in accordance with the Commission's Appendix B Guidelines for Vegetative Stabilization and, that MCR, by October 12, 2022, submit a revegetation plan created by a licensed forester in accordance with the provisions of Chapter 10, Section 10.27(B)(5). The NOV indicated that this plan must include a detailed timeline for the revegetation that would ensure completion by June 15, 2023.
8. **Violations:** The activities described in paragraph 6 above resulted in violations of the following sections of 12 M.R.S., Chapter 206-A, the Commission's *Land Use Districts and Standards*, 01-672

C.M.R. 10 (revised March 29, 2022) (hereinafter “Chapter 10”), and the Conditions of Approval for Building Permit BP 16923.

- A. By commencing construction of a development that was not authorized by a permit issued by the Commission, MCR violated 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.

- B. By failing to retain a vegetative buffer strip within 100 feet of the natural high watermark of Moosehead Lake and not obtaining a permit for this deviation, MCR violated Chapter 10, section 10.27(B)(1)(d).

A vegetative buffer strip must be retained within 100 feet of the normal high water mark of a body of standing water 10 acres or greater in size or flowing water draining 50 square miles or more.

- C. By creating a cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown, MCR violated Chapter 10, section 10.27(B)(2)(a).

Within this buffer strip, vegetation must be maintained as follows: There must be no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown. However, a footpath is permitted, provided it does not exceed six feet in width as measured between tree trunks, and, has at least one bend in its path to divert channelized runoff.

- D. By cutting trees within the buffer strip without maintaining a well-distributed stand of trees and other natural vegetation, MCR violated Chapter 10, section 10.27(B)(2)(b).

Within this buffer strip, vegetation must be maintained as follows: Selective cutting of trees within the buffer strip is permitted provided that a well-distributed stand of trees and other natural vegetation is maintained. For the purposes of this section a “well-distributed stand of trees” adjacent to a body of standing water 10 acres or greater in size shall be defined as maintaining a rating score of 24 or more in a 25-foot by 50-foot rectangular area as determined by the following rating system.

Near other water bodies, tributary streams and public roadways a “well-distributed stand of trees” shall be defined as maintaining a rating score of 16 or more per 25-foot by 50-foot (1,250 square feet) rectangular area as determined by the following rating system.

- E. By failing to obtain a permit for grading within 100 feet of the normal highwater mark of Moosehead Lake, MCR violated Chapter 10, section 10.27(F)(6)(b).
Where filled or graded areas are in the vicinity of water bodies or wetlands, such filled or graded areas must not extend closer to the normal high water mark of a non-tidal water body or coastal wetland, or the upland edge of a freshwater wetland located in a P-WL1

subdistrict than the following: For a major flowing water and body of standing water 10 acres or greater in size: 100 feet

- F. By failing to promptly stabilize the disturbed and exposed area of soils as described in paragraph 6 above, MRC violated Chapter 10, section 10.27(F)(7).

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 P-WL1 subdistricts, shall be stabilized according to the Guidelines for Vegetative Stabilization contained in Appendix B of this chapter.

- G. By clearing vegetation, filling and grading, and not stabilizing all areas of disturbed soil within 100 feet of the normal high water mark of Moosehead Lake, MCR violated Conditions #4, #6, and #9 of Building Permit BP 16923.

Condition #4. 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.

Condition #6. Structures authorized under this permit, as well as filling/grading/soil disturbance and cleared openings created as part of construction activities authorized under this permit, must be located to meet the road, property line, water, and wetland setback distances, exterior dimensions and building heights listed in Sections 3, 6, and 7 approved by this permit.

Condition #9. 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.

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, MCR agrees to:
- A. Within 30 days of the date of signature of this document by all parties, pay a civil penalty of six thousand one hundred fifty dollars (\$6,150.00). 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 revegetation plan prepared with and signed by a qualified professional in accordance with the provisions of Chapter 10, Section 10.27(B)(5), a copy attached hereto.
 - C. By June 15, 2023, reestablish a vegetative buffer strip within 100 feet of Moosehead Lake, subject to LUPC staff review and approval of a revegetation plan prepared with and signed by a qualified professional in accordance with the provisions of Chapter 10, Section 10.27(B)(5). The reestablished vegetative buffer, as depicted on the approved revegetation plan, shall remain in perpetuity, and be maintained in accordance with the requirements of the Commission's Vegetation Clearing Standards, Chapter 10, Section 10.27(B), a copy attached hereto.
 - D. Within 10 days of completion of the planting requirement specified in Condition 10(C) above, submit to the Commission written certification and photographic evidence demonstrating that the above required remedial work has been properly completed in accordance with that condition.
 - E. The following conditions govern the conveyance of the subject property: MCR 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 MCR, its successors and assigns in the Subject Property or any portion thereof. Any person acquiring the Subject Property is subject to this Agreement and bound to comply with the terms and conditions herein as if that person were MCR.
 - F. The following actions shall be taken by MCR and the Commission to record this Agreement in the Piscataquis County Registry of Deeds: Within 30 days of the date of signature of this document by all parties, MCR shall submit to the Commission the recording fee by check or money order in the amount of \$42.00 made payable to the "Piscataquis County Registry of Deeds" for the recording of this Agreement. Upon receipt of payment, the Commission staff will record the Agreement in the Piscataquis 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 MCR fails to submit the appropriate recording fee, the Commission may record the Agreement in the Piscataquis County Registry of Deeds without waiver of the violation caused by MCR's 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 Office of the Maine Attorney General shall release their causes of action against MCR arising from the violations described in paragraphs 6 and 8 above.

SIGNATURES PAGES FOLLOW

IN WHITNESS WHEREOF, the parties hereto have executed this Administrative Settlement Agreement:

RESPONDENT

By: _____ Date: _____, 2022
Rebecca Lizotte
Title: Manager
MCR Properties, LLC

STATE OF MAINE
County of Cumberland, ss. Date: _____, 2022

Personally appeared the above named Rebecca Lizotte, Manager of MCR Properties, LLC and acknowledged the foregoing to be her free act and deed in her said capacity, and the free act and deed of MCR Properties, LLC.

Before me,

Notary Public

(Type or Print Name as Signed)

My Commission Expires: _____

36MAINE LAND USE PLANNING COMMISSION

By: _____
Stacie R. Beyer, Acting Executive Director

Date: _____, 2022

STATE OF MAINE
County of Kennebec, ss.

Date: _____, 2022

Personally appeared the above named Stacie R. Beyer, in her capacity as Acting Executive Director of the Land Use Planning Commission, and acknowledged the foregoing to be her free act and deed in her said capacity and the free act and deed of the Land Use Planning Commission.

Before me,

Notary Public

(Type or Print Name as Signed)

My Commission Expires: _____

OFFICE OF THE MAINE ATTORNEY GENERAL

By: _____
Caleb Elwell, AAG

Date: _____, 2022