



JANET T. MILLS  
GOVERNOR

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

AMANDA E. BEAL  
COMMISSIONER

JUDY C. EAST  
EXECUTIVE DIRECTOR

# PERMIT DENIAL

## STAFF DECISION IN THE MATTER OF

DEBORAH A. AND ROBERT G. III BUTZBACH  
MASTERMAN ISLAND JOINT LIVING TRUST  
BUILDING PERMIT APPLICATION BP 0059-C

The Maine Land Use Planning Commission (“the Commission”), through its staff, after reviewing the application and supporting documents submitted by the Deborah A. and Robert G. III Butzbach Masterman Island Joint Living Trust, for Amendment C to Building Permit BP 0059, finds the following facts:

1. Applicant: Deborah A. and Robert G. III Butzbach Masterman Island Joint Living Trust  
Robert Butzbach, Jr., Trustee  
P.O. 117  
Rockwood, Maine 04478
2. Date of Completed Application: December 13, 2016
3. Location of Proposal: Plan 01, Lot 4  
Sandbar Tract Township, Piscataquis County
4. Zoning: Great Pond Protection (P-GP) subdistrict
5. Affected Water Body: Moosehead Lake

### **Relevant History and Background**

6. Robert Butzbach, Jr. is trustee of the Deborah A. and Robert G. III Butzbach Masterman Island Joint Living Trust, which owns an undivided one-half interest in Masterman Island. Masterman Island is an approximately 1.2-acre island located at the mouth of Lamb’s Cove in Moosehead Lake in Sandbar Tract Township. The island is approximately 150 wide by 350 long and is zoned as a Great Pond Protection (P-GP) subdistrict.



7. On September 29, 1972, the Commission issued building permit BP 0059 to Fay S. Butzbach, approving construction of a 16-foot by 24-foot cottage at a distance of 50 feet from the shoreline of Moosehead Lake. The permit approved the cottage to be placed on 20-inch by 20-inch concrete pads and constructed with only minimal clearing and no trees over 3 inches in diameter being cut. The permit also stipulated that no water be piped into the cottage but water may be carried to the cottage from the lake. The permit approved the proposed use of a self-contained chemical toilet or gas destroyer, and the permit was conditioned to require wastewater disposal near the center of the island in a suitable pit, or to be carried off the island for proper disposal.
8. On December 11, 1972, the Commission issued Amendment A to BP 0059 (“BP 0059-A”), revising the approved location for construction of the cottage to a distance of 20 feet from the shoreline of Moosehead Lake. The Commission approved the construction of the cottage shortly after inception of the Commission in 1971, and prior to promulgation of water body setbacks in 1977.<sup>1</sup> As with initial permit BP 0059, BP 0059-A approved the cottage to be placed on 20-inch by 20-inch concrete pads and constructed with only minimal clearing and no trees over 3 inches in diameter being cut and carried forward the same stipulations on hand-carry water. BP 0059-A approved the proposed use of a self-contained chemical toilet or gas destroyer; no wastewater system was proposed. BP 0059-A required all wastewater and toilet waste be disposed away from the shore in Berkshire soil on the property.
9. On August 28, 1974, the Commission issued Amendment B to BP 0059 approving the construction of a proposed 12-foot by 12-foot screenhouse on concrete pads 15 feet from the shoreline.
10. On June 6, 2012, Phillip Brackin, in his capacity as agent for Deborah A. and Robert G. III Butzbach Masterman Island Joint Living Trust, submitted an application for a shoreland alteration permit to the Commission. The applicant proposed construction of a wooden ramp and concrete steps at the shoreline of Moosehead Lake.
11. On September 30, 2013, the Department of Professional and Financial Regulation, through its State Electrical Inspector, issued an Order of Correction of Electrical Violations to Phillip Brackin and Deborah Butzbach (OOC #009-2013KB), citing violations of the 2011 National Electrical Code. The owners of the island property had installed an electrical power cord from a residence on the mainland to the island camp. The cord was buried in the ground on mainland and submersed in Moosehead Lake.
12. On December 13, 2013, the Commission staff returned the June 2012 application as incomplete for processing on the basis that the applicant had not demonstrated it had legally enforceable title, right or interest in all the property proposed for development or use sufficient to permit the proposed development and use of the property. The Commission staff noted in its cover letter accompanying the returned application that the electrical cord in the lake required permission from the Bureau of Parks and Lakes and Brookfield Power Company, and these permissions did not accompany the June 2012 application.

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<sup>1</sup> The first version of the Commission rule Chapter 10, Land Use Districts and Standards, to include dimensional requirements including water body setbacks was adopted on January 12, 1977. See Chapter 10, § 10.17(B)(1) (1977).

13. On July 15, 2014, Robert Butzbach, Jr., in his capacity as power of attorney for Deborah Butzbach, submitted an application for an expedited shoreland alteration permit to the Commission. The applicant proposed construction of a wooden ramp and concrete steps at the shoreline of Moosehead Lake, construction of an equipment access ramp, removal or dredging of rocks from within the lake, and development of a 10-foot wide by 35-foot long breakwater in the lake.
14. On July 17, 2014, the Commission staff returned the July 2014 application as incomplete for processing on the basis that the applicant had not demonstrated legally enforceable title, right or interest in all the property proposed for development or use sufficient to permit the proposed development and use of the property; improper application form for the proposed activity; and improper application fee. The Commission staff again noted in its cover letter accompanying the returned application that the electrical cord in the lake required permission from the Bureau of Parks and Lakes and Brookfield Power Company, and these permissions did not accompany the July 2014 application.
15. On August 13, 2014, the Department of Professional and Financial Regulation issued a second Order of Correction of Electrical Violations to Phillip Brackin and Deborah Butzbach (OOC #008-2014KB), citing violations of the 2011 National Electrical Code and requiring the power cord to be permanently removed, not just during winter.
16. In early February 2016, Robert Butzbach, Jr. submitted an application to the Commission proposing to run an electrical cable from the mainland in Sandbar Tract Township to Masterman Island.
17. On February 19, 2016, the Commission staff returned the February 2016 application for the electrical cable as incomplete for processing on the basis that the applicant had not demonstrated he had legally enforceable title, right or interest in all the property proposed for development or use sufficient to permit the proposed development and use of the property; improper signature; and improper application fee.
18. On November 11, 2016, Robert Butzbach, Jr., as trustee for the Deborah A. and Robert G. III Butzbach Masterman Island Joint Living Trust, submitted the instant application for amendment C to BP 0059. The applicant seeks approval to install a 1,000-gallon propane tank measuring 17 feet long by 41-inches in diameter at a distance of 30 feet from the normal high water mark; to construct a shed measuring 10 feet long by 12 feet wide by 8 feet high, also 30 feet from the shoreline, to house a generator; and to clear vegetation, opening an area measuring 14 feet by 16 feet at a distance of only 28 feet from the lake. The proposed propane generator system would include a bank of 6 solar batteries and 2 solar panels to prevent the batteries from freezing. The size and installation location of these components is not addressed in the application.

### **Current Proposal**

19. In its current proposal, the applicant again seeks approval to install the infrastructure necessary to provide a permanent source of electrical power to the island development, the primary structure on which is the legally existing nonconforming camp that was permitted as a 384-square foot, primitive cottage with no running water. After being ordered by the State Electrical Inspector to remove the power cord for electrical code violations, the Commission

staff assisted the property owners, their consultants, agents and legal counsel in considering alternatives to this unsafe practice, in the context of the Commission's land use standards and permitting requirements. After returning the February 2016 permit application for deficiencies, the staff made a recommendation to consider installing a generator typical of the size used for small residential applications.

The current proposal, including the 1,000-gallon propane tank, the 10-foot by 12-foot shed to house a large generator, and the clearing of 224 square feet of vegetation to install these structures, is not in line with the recommendations made by staff for using a generator rather than a submerged electrical cable, as proposed in 2016. Although exact propane tank size requirements depend on the specific energy demands, generally available information indicates that a 1,000-gallon propane tank is an appropriate size tank for large residences (4,500 square feet or larger) and for commercial and industrial applications, such as commercial kitchen cooking. The proposed generator shed is nearly a third of the size of the camp. Stationary generators capable of providing power to a camp of the size on the island are readily available, do not require placement inside a structure, and are approximately 4 feet long by 2 feet wide. Portable gas powered generators are also readily available and would not necessitate permanent buildings or large vegetative clearings.

The prior recommendation to consider using a small generator and 100-gallon propane tank typically used for small residences was repeated in a letter from the staff to the applicant's agent, dated June 30, 2017, in which the staff advised that a small generator and installation of a 100-gallon propane tank typical of small residential applications would not require a permit from the Commission.

20. In addition to describing the proposed activities, the building permit application requires the applicant to identify existing structures on the property.
  - a. The current application describes several existing structures. The dwelling is listed as being 16 feet long by 24 feet wide by 20 feet high, located 20 feet from the shoreline and constructed in 1995. A deck is listed as being 10 feet long by 22 feet wide and constructed in 1995. This deck appears to be an unapproved expansion of the dwelling.
  - b. The current application describes a screenhouse as being 10 feet long by 12 feet wide by 18 feet high, located 15 feet from the shoreline, and for reasons that are unclear to the Commission, specifies that the screenhouse was constructed in 1973 rather than after the permit for this structure was issued in 1974.
  - c. The current application describes an existing storage area as being 6 feet long by 11 feet wide by 8 feet high, located 40 feet from the shoreline, and constructed in 1995. The purpose of this structure is not identified, and it is described as having walls but not a roof. This storage structure appears to be an unapproved, nonconforming structure.
  - d. The current application identifies several other structures on the island, including 2 dock sections and ramps and 2 ice fishing sheds. Presumably, the docking structures are installed in the lake for use during the open water season, and the ice fishing sheds are placed on the lake during the winter season. These structures are then stored on the island when not in use, the exact location of which is not discussed in the application.

## **Review Criteria and Standards**

21. **Permit required.** 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. A person may not commence any construction or operation of any development without a permit issued by the Commission. 12 M.R.S. § 685-B(1)(A) and (C).
22. **Structure.** A structure means anything constructed or erected with a fixed location on or in the ground, or attached to something having a fixed location on or in the ground, including, but not limited to, buildings, mobile homes, retaining walls, billboards, signs, piers and floats. A gas or liquid storage tank that is principally above ground is also a structure. *Land Use Districts and Standards*, 01-672 C.M.R. 10 (last revised June 17, 2019) (Chapter 10), § 10.02(228).
23. **Nonconforming structure.** A structure, lawfully existing at the time of adoption of district regulations or subsequent amendment made thereto, that does not conform to the district regulations. 12 M.R.S. § 682. More specifically, a nonconforming structure is legally existing, but does not meet one of the following dimensional requirements: setback, lot coverage, or height requirements.
24. **Accessory structure.** A structure subordinate to a permitted or conditional structure and customarily incidental to the permitted or conditional use of the structure. Chapter 10, § 10.02(1). The proposed generator shed and the 1,000-gallon propane storage tank are both accessory structures.
25. **Water body setbacks.** The minimum setback for structures is 100 feet from the nearest shoreline of a body of standing water 10 acres or greater in size. Chapter 10, § 10.26(D)(1)(b). An exception may be made to the shoreline, road, and/or property line setback requirements for structures where the Commission finds that such structures must be located near to the shoreline, road, or property line due to the nature of their use. Structures which must be located near to the shoreline include structures which require direct access to the water as an operational necessity, such as piers, docks, retaining walls, and structures necessary for commercial fishing activities or water dependent uses within a Maritime Development (D-MT) subdistrict. Chapter 10, § 10.26(G)(5).
26. **Limitations on the size of structures near water bodies.** The Commission may regulate and prohibit extension or enlargement of nonconforming structures. 12 M.R.S. § 685-B(7)(B). Legally existing, principal and accessory structures located within 100 feet of a lake may be expanded subject to the other applicable requirements of Chapter 10, § 10.11, provided that lot coverage limitations and other applicable land use standards are met. The maximum height of all structures within these areas is 25 feet, or existing structure height, whichever is greater. The maximum combined footprint for all structures within these areas may not exceed the limits in Chapter 10, § 10.11(C)(1)(b), Table 10.11,C-1, restated immediately below.

| <b>Closest Distance of Expansion<br/>from Water Body</b>                               | <b>Maximum Combined Footprint<br/>for all Structures not Meeting<br/>Water Body Setbacks</b> |
|--|--|
| Greater than 25 and less than 50 feet  | 750 square feet  |
| Between 50 and 75 feet   | 1,000 square feet  |
| Greater than 75 and less than 100 feet<br>(if applicable setback is more than 75 feet) | 1,500 square feet  |

27. Vegetation clearing. Vegetation clearing activities not in conformance with the standards of Chapter 10, § 10.27(B) may be allowed upon issuance of a permit from the Commission provided that such types of activities are allowed in the subdistrict involved. An applicant for such permit must show by a preponderance of the evidence that the proposed activity, which is not in conformance with the standards of Section 10.27(B), will be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area.

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. Chapter 10, § 10.27(B)(1)(d). Within the buffer strip, there may be no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown. Selective cutting of trees within the buffer strip is permitted provided a well-distributed stand of trees and other natural vegetation is maintained. Chapter 10, § 10.27(B)(2).

28. General criteria for approval. An applicant for a permit must also meet the general criteria for approval specified at 12 M.R.S. § 685-B(4), incorporated into rule in Chapter 10, § 10.24. Of these, Chapter 10, § 10.24(E) specifies that to issue a permit the proposal must be in conformance with the Title 12, chapter 206-A and the regulations, standards and plans adopted pursuant thereto.

### **Findings and Conclusions**

29. Proposed accessory structures do not meet water body setbacks. The narrow width of the applicant's island property is a limiting factor as to how it can be developed. Because the island is only 150 wide, the Commission staff find that a generator shed and propane tank of the sizes proposed cannot be physically sited on the lot to meet the 100-foot water body setback. The Commission staff find that neither proposed structure is an operational necessity of the existing camp and conclude that neither qualifies for an exception from the 100-foot setback pursuant to Chapter 10, § 10.26,G(5).

30. Proposed accessory structures do not qualify for an exemption. The law provides that a land use standard may not deprive an owner of the use to which it is lawfully devoted at the time of adoption of that standard. The Commission issued permits in 1972 approving the construction of the camp and greenhouse, as proposed, which effectively provided for the use of the island to which it was lawfully devoted at that time. The law further provides that year-round and seasonal single-family residences in existence and use as of September 23, 1971, while so used, and new accessory buildings or structures or renovations of the buildings or structures that are or may be necessary to the satisfactory and comfortable continuation of the residential use are exempt from the requirement to obtain a permit from the Commission. 12 M.R.S. §

685-A(5). The Commission's land use standards provide a limited allowance for the construction of new, detached accessory structures not meeting water body setbacks provided they are associated with a pre-1971 residence and meet certain conditions, notably that accessory structures are limited to the size and height requirements of Chapter 10, § 10.11(C)(1)(b). Chapter 10, § 10.11(C)(5).

The Commission approved construction of the camp in 1972, but the application identifies that the camp was not constructed until 1995. The Commission finds that no structures existed on the island before 1971. Therefore, the Commission staff conclude that the provisions allowing new accessory structures within 100 feet of a lake do not apply to the applicant's proposal.

31. Expansion of existing structures is not allowed. In certain instances, legally existing nonconforming structures may be expanded. Expansions are subject to permitting and a number of limitations that are set forth in Chapter 10, § 10.11(C)(1). The relevant limitation in this matter is that the size of structures near water bodies is limited, as specified above in Table 10.11,C-1. All of the existing structures on the island are less than 50 feet from Moosehead Lake. The maximum allowable combined footprint for all structures within this area is 750 square feet. The Commission staff find that the combined footprint of existing structures is as set forth in the table below.

| <b>Existing structure</b>                        | <b>Dimensions</b> | <b>Area</b>            |
|--|-------------------|------------------------|
| Camp   | 16 feet x 24 feet | 384 square feet        |
| Deck   | 10 feet x 22 feet | 220 square feet        |
| screenhouse                                      | 10 feet x 12 feet | 120 square feet        |
| Storage Area                                     | 6 feet x 11 feet  | 66 square feet         |
| <b>Combined footprint of existing structures</b> |                   | <b>790 square feet</b> |

The Commission staff find that the existing combined footprint of 790 square feet already exceeds the maximum allowable by 40 square feet. Because the applicant has developed the property to the maximum extent allowable within 50 feet of the lake, the Commission staff conclude that no further expansion is available to the existing structures.

32. Proposed vegetation clearing does not meet standards. The Commission staff find conclude that the proposal to clear an area measuring 14 feet by 16 feet at a distance of 28 feet from the shoreline does not meet the vegetation clearing standards, specifically the requirement to maintain a buffer strip containing a well-distributed stand of trees and other natural vegetation within 100 feet of Moosehead Lake. Although the Commission may issue a permit for vegetation clearing that exceeds the standards set forth in Chapter 10, § 10.27(B), the Commission staff conclude that the activities for which the clearing is proposed do not meet the no undue adverse impact requirement set forth in Chapter 10, § 10.27(B).
33. The proposal does not conform to the general criteria for approval of permit applications. For the reasons discussed in the preceding paragraphs, the Commission staff conclude that the general criteria for approval have not been met, in that the proposal is not in conformance with Title 12, chapter 206-A and the regulations, standards and plans adopted pursuant thereto. Chapter 10, § 10.24(E).

**Therefore, the Commission DENIES the application of the Deborah A. and Robert G. III Butzbach Masterman Island Joint Living Trust for a generator shed and 1,000-gallon propane tank and the associated vegetative clearing as proposed in the application for Amendment C to Building Permit BP 0059.**

Pursuant to *Rules of Practice* 01-672 C.M.R. 4.04(11)(a), (last amended October 18, 2013), requests for Commission review of staff decisions must be made within 30 days of the decision.

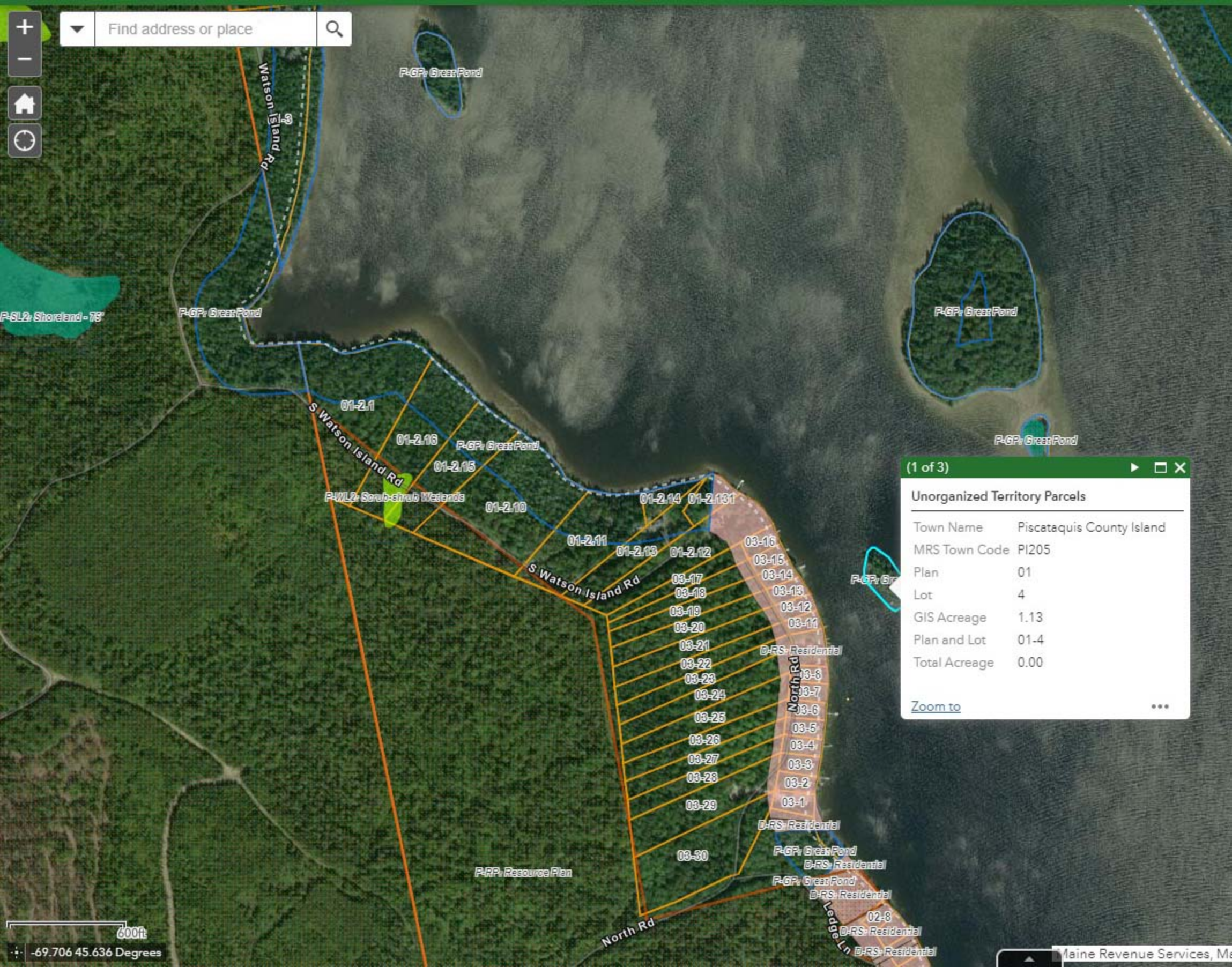
DONE AND DATED AT AUGUSTA, MAINE, THIS 3<sup>rd</sup> DAY OF August, 2020.



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Judy C. East, Director

Find address or place



(1 of 3)

### Unorganized Territory Parcels

|               |                           |
|---------------|---------------------------|
| Town Name     | Piscataquis County Island |
| MRS Town Code | PI205                     |
| Plan          | 01                        |
| Lot           | 4                         |
| GIS Acreage   | 1.13                      |
| Plan and Lot  | 01-4                      |
| Total Acreage | 0.00                      |

[Zoom to](#)



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