



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY  
LAND USE PLANNING COMMISSION  
P.O. BOX 1107  
GREENVILLE, MAINE 04441

AMANDA E. BEAL  
COMMISSIONER  
JUDY C. EAST  
EXECUTIVE DIRECTOR

# Memorandum

**To:** LUPC Commissioners  
**From:** Debra Kaczowski, Regional Representative, Greenville Regional Office  
**Date:** February 6, 2020  
**Re:** Administrative Settlement Agreement for Enforcement Case EC 18-26  
David & Ashley Cox, Mount Chase Twp., Penobscot County

---

Attached is a staff recommendation for an Administrative Settlement Agreement (Agreement) for Enforcement Case EC 18-26 with David & Ashley Cox for alleged violations associated with their property on Lower Shin Pond in Mount Chase Twp., Penobscot County, Maine.

## Background Information and Administrative History

*a. October 10, 2018, Commission meeting*

At the October 2018 Commission meeting, staff presented for discussion and further direction the facts regarding this matter. The Commission concluded its discussion of this matter in October 2018 by directing staff to work with the parties to develop a reasonable solution to the unauthorized subdivision and the nonconforming lot on which a dwelling has already been constructed. An excerpt of the October 10, 2018 minutes is included as **Attachment A** of this memorandum for your review. Factual information material to the Commission's decision on the proposed Agreement are summarized in this section.

*b. Land Division (see Attachment B Land Division Maps)*

On June 2, 2004, Hughes Lumber, Inc. conveyed to Ronald Gerald approximately 99 acres of land having no frontage on Lower Shin Pond plus four 12-foot wide strips of land running from the 99 acres of backland to the shore of Lower Shin Pond. For purposes of applying the Commission's subdivision rules, this parcel is subsequently referred to as the "parent parcel."

The four 12-foot wide strips of land are shown on the "Plan of Easterly Shore, Lower Shin Pond Camp Lots Situated on Tract No. 49," dated August 1934, recorded in the Penobscot Registry of Deeds in Plan Book 25, Page 26 ("Lower Shin Pond Camp Plan"), and are situated between Lots 26 and 27 ("Strip A"),

Lots 28 and 29 (“Strip B”), Lots 30 and 31 (“Strip C”), and Lots 32 and 33 (“Strip D”).<sup>1</sup> The narrow shorefront lots were created in 1934.

Ronald Gerard subsequently conveyed:

2009: Two of the 12-foot wide strips (Strips A & B) for the purpose of settling a dispute to Elliot Hersey (abutter) & Hersey conveyed to Gerard a 24-foot wide strip of land on the northerly side of Strip C. Strip C and the 24-foot wide strip of land conveyed to Gerard were abutting strips. The combined 36-foot wide strip of land is referred to as “Strip E.”

2011: 96.6 acres of his 99-acre parcel to Todd and Carol Brodeur.  
Gerard retained a 2.5-acre lot, including Strip D and Strip E.

2015: A 2.43-acre back lot portion of the remaining 2.5-acres to David & Ashley Cox.  
In a separate deed on the same date, Gerard conveyed a 36-foot wide waterfront strip of land (Strip E) to the Coxes. After this conveyance, Ronald Gerard only retained a single 12-foot wide strip of land, Strip D.

Strip E, conveyed to the Coxes, does not meet the minimum lot size requirement of 40,000 square feet pursuant to Ch. 10, § 10.26(A)(1), therefore, it is merged with the Coxes’ 2.43-acre back lot with which it is contiguous and under the same ownership. Ch. 10, § 10.11(E)(5).

The Coxes merged lot includes just 36 feet of frontage on Lower Shin Pond and therefore does not meet the minimum shoreline frontage requirement of 200 feet per dwelling unit for residential uses pursuant to Ch. 10, § 10.26(B)(2)(a).

*c. Subdivision*

Strip D retained by Ronald Gerard, an approximately 12-foot wide by 200-foot deep strip of land along the shore of a pond, does not qualify as an exempt lot for purposes of subdivision. Thus, the land divisions between Ronald Gerard, Todd and Carol Brodeur, and the Coxes between 2011 and 2015, as described above, created three lots within a five-year period: the Brodeur lot, the Cox lot, and Gerard’s Strip D. Commission staff are working separately with Mr. Gerald, who has been cooperative, to resolve the alleged violation regarding subdivision.

*d. Permitting*

On August 18, 2015, the Coxes submitted a building permit application to the Commission seeking approval for the construction of a residential dwelling on what they identified as their 2.43-acre lot. The Coxes did not identify on their building permit application that they additionally owned contiguous Strip E on Lower Shin Pond. The Coxes’ lot, which includes just 36 feet of shoreline frontage, lacks the minimum shoreline frontage required for the 12-foot by 24-foot residential dwelling proposed in their building permit application and subsequently approved by the Commission on August 25, 2015 (Building Permit BP 15442).

Also omitted from the application was all relevant land division history, which reveals that the Coxes’ lot is part of an unapproved subdivision created by Ronald Gerard. Because the Coxes’ lot is part of a

---

<sup>1</sup> Penobscot County Registry of Deeds, Book 9366, Page 300.

subdivision created without Commission approval, the Commission would not have been able to approve the Coxes' application for the new dwelling.

*e. Certificate of Compliance*

The Coxes constructed their dwelling, as proposed and approved in BP 15442, on the back portion of their lot—at a distance of more than 250 feet from the shoreline of the pond. Because the dwelling was constructed on a lot that does not include sufficient shoreline frontage, the Coxes are not able to obtain a certificate of compliance from the Commission stating that the requirements and conditions of approval, namely that the Commission's dimensional requirements regarding shoreline frontage, have been met.<sup>2</sup>

*f. Staff recommendation*

Although alone the Coxes' back lot contains sufficient acreage and meets other standards for residential development, when combined with Strip E, it does not. Nevertheless, the Coxes obtained a permit from the Commission to construct a dwelling on the back portion of the combined lot. Following the direction of the Commission provided in October 2018, staff worked with the Coxes to develop a reasonable and agreeable solution to the problem. Resolution of enforcement matters is at the prosecutorial discretion of the Commission. In this case, the range of options available to resolve this matter stretch from no action to requiring the removal of the dwelling from the Coxes' lot. Staff recommend a resolution that strikes an appropriate balance between these two extremes. Staff recommend against removal of the dwelling because the back lot, on its own, allows for this type of development; the development of the lot with a dwelling does not result in undue adverse effect on existing uses, scenic character, or natural and historic resources in the area; and other conditions and development restrictions can be imposed through the Agreement to protect the nonconforming waterfront portion of the lot from development.

Therefore, staff present for the Commission's consideration an Agreement that requires the Coxes 1) to pay a civil penalty of five thousand dollars (\$5,000); 2) to disclose the terms and restrictions of the Agreement upon sale of the property; and 3) to pay to record the Agreement with the Penobscot County Registry of Deeds. The Agreement would allow the Coxes and future owners 1) to maintain the existing dwelling, as constructed and approved in BP 15442, on the property in its current location; 2) to maintain a 6-foot-wide footpath on Strip E; and 3) to install a temporary docking structure from Strip E. The Agreement would stipulate that no other development is allowed on Strip E. These restrictions are consistent with those that would apply to this narrow strip of waterfront property even if it was not part of the larger back lot. A copy of the draft Agreement, which the Coxes have provided verbal agreement to sign and return in time for the February meeting, is included as **Attachment C** of this memorandum. A copy of the signed Agreement will be provided to the Commissioners in advance of the meeting. In the event that the Agreement is not available by February 12, 2020, staff seek direction from the Commission on whether to continue with this method of resolving the enforcement case or if another form of relief is preferred.

Abutting property owners, Michael Storie and Richard Storie, submitted a letter to Commission staff objecting to the proposed Agreement. A copy of the Storie's letter is included as **Attachment D** of this memorandum for the Commission's consideration.

Staff recommend acceptance of the Agreement, as proposed and included as Attachment C of this memorandum, to resolve the alleged violations surrounding the Coxes' residential dwelling.

---

<sup>2</sup> After construction of a dwelling approved by the Commission, the owner must obtain a certificate of compliance stating that the requirements and conditions of approval have been met. 12 M.R.S. § 685-B(8).

## **ATTACHMENT A**

October 10, 2018 Commission Meeting Minutes (Excerpt)

local budgets, agreeing that it was 3-4 times more expensive to put in a stream smart crossing. Around 50 to 60 years ago, he explained, the only corrugated metal pipe available was the galvanized pipe. He said those only last 20 years. After that, the bottom rusts out and the road collapses. He further explained that when plastic pipe became available, one of the selling points was they sped up water flow, but unfortunately, that prevented fish from getting back up through the crossing. He felt that if the Commission identifies what a stream is and adopts the golden rule, regardless of whether it is a driveway or road crossing, the Commission would be successful. He said a properly installed crossing will outlive the wrong crossing by 4 times. He asked whether landowners should spend four times more now, or replace the crossing four times later spending ten times more money. Commissioner Curtis expressed appreciation for the information the speakers provided and for all the aquatic creatures that need to go through a crossing, which, he said, are far more than just the fish. Lastly, he talked about a MDOT bridge, walkways for aquatic organisms, and the impact on predatory/ prey relationships.

Sarah Medina asked if the Commission was thinking about the Stream Smart crossing principles in terms of development roads, or also for land management roads. She said there was already a program where forest managers are building Stream Smart crossings on a voluntary basis, and they would hate to see it become a regulatory requirement. She said forest managers are in favor of better crossings, and upgrading them over time. Commissioner Worcester stated that, at this point, the Commission was just exploring what direction they should be going in. Director Livesay explained that road crossing standards came up in the context of the subdivision rule revisions, and what the crossing standards should be for subdivisions. At the last Commission meeting, the question was raised, if subdivision roads had to meet a higher standard, what about other roads. There was no decision made at that meeting. Director Livesay stated that the Commission doesn't regulate land management roads, except in development subdistricts, and in the Commission's discussions, no one has talked about land management roads. He said, we will leave that up to the Forest Service. He also said, he didn't think we would be considering driveways in the discussion; just subdivision roads, and other roads in general, which do not include land management roads.

## **ENFORCEMENT MATTERS**

**Lance H. and Lillian D. Johnson Irrevocable Trust (EC 10-15)** – Consideration of enforcement matter and referral to the Office of the Attorney General; Sinclair Township, Aroostook County; Billie MacLean

Billie MacLean gave a short presentation of the development and permitting history in this case involving expansion of a nonconforming dwelling. The Johnsons constructed the rear addition larger than authorized under Building Permit BP 13427. In addition, the Johnsons constructed a side deck without permit approval and did not remove the existing lakeside as required in the conditions of Building Permit BP 13427. The size of the resulting structure exceeds the Commission's standards for expansions of nonconforming structures. The Johnsons were not present at the meeting but had submitted written comments which were given to the Commission for review prior to the meeting.

**Commissioner Gilmore moved to refer this matter to the Office of the Attorney General; Commissioner Fitzgerald seconded; Vote: 8-0-0-0 Unanimous**

**Cox, David & Ashley** – Discussion of possible land use violations and options for pursuing and resolving violations; Mount Chase, Penobscot County; Debra Kaczowski

The land division and permitting history of David and Ashley Cox's property was presented by Debbie Kaczowski. The parent parcel, owned by Ronald Gerard, included 99 acres and four 12-foot strips of land lying between existing shorefront camp Lots 26/27, 28/29, 30/31, & 32/33. Two of the 12-foot strips were conveyed to an abutter

and a 24-foot strip was obtained by Gerard for purposes of solving a land dispute. Gerard subsequently sold 96 acres to Todd & Carol Brodeur with an easement to the shoreline over the 12-foot strip of land between Lots 32/33. Gerard retained a 2.5 acre parcel which included a 36-foot strip and a 12-foot strip of land between Lots 30/31 and 32/33, respectively. In July 2015, Gerard sold a 2.43 acre parcel and a 36-foot strip of land in two separate deeds to the Cox family and retained a 12-foot strip of land between Lots 32/33. In August of 2015, the Cox family submitted and was issued a building permit for a dwelling and primitive wastewater disposal system on the 2.43 acre parcel. Only the deed for the 2.43 acre lot was submitted as part of the application. In September 2015, staff received a written complaint from a neighbor regarding concerns with the Cox lot, including creation of a spaghetti lot and below minimum shoreline frontage. Staff requested the Commission consider what steps should be taken to address any violations that occurred in relation to the lot conveyances, the creation of the Cox lot, and the issuance of the building permit.

Commissioner Fitzgerald asked if the building and pit privy were built back out of shoreland zoning? Debbie answered that is correct. Commissioner Worcestor stated that we don't know whether it was by oversight or by intent, but staff was misled in terms of the land the owner had, otherwise they wouldn't have gotten a permit, is that correct? Director Livesay answered correct. Director Livesay stated it is a challenging situation to try to figure out how to resolve the permitting piece of it and, if you look at the land division, you have 3 lots created within a 5-year period. You have a conveyance to Brodeur as one division, a 2<sup>nd</sup> conveyance to Cox, and a 3<sup>rd</sup> lot which is the small 12-foot strip of land retained by Gerard, the original person doing the division. The 12-foot strip isn't buildable and it doesn't qualify for the retained lot exception used for forestry practices.

Commissioner Gilmore asked whether we have any provisions for a sale to an abutter? Director Livesay stated we do. If an individual sells a lot or property to an abutter, that is exempt from counting as a division for subdivision purposes. None of the divisions that we talked about here involve abutter conveyances. The first division occurred when the 96 acres were conveyed to Brodeur. At that point there were two lots, the Brodeur lot and then Gerard retained the 2.43 acre parcel and the 2 strips of land. Gerard later sold the 2.43 acre parcel and the 36-foot strip to Cox and retained the 12-foot strip. This created 3 lots within a 5-year period.

Commissioner Gilmore asked if that lot [the retained strip] meets the standards for size? Director Livesay replied it does not meet the standard for size to allow for any structural development. The Commission's rules don't prohibit the creation of an undersized lot, they just prohibit development of the undersized lot. This is different than some municipalities where you simply can't create an undersized lot.

Commissioner Humphrey asked if the tiny lot [the retained strip] had been sold to Cox at the same time it wouldn't have been an issue? Director Livesay replied if the two strips and the back piece were sold to Cox all at once, there would be two lots within a 5-year period, no subdivision problem. The question would remain, and it is a question before us today, what does that mean from a permitting perspective? Can the Commission issue a permit for a camp on the back portion of the property when there are these two little strips that run down to the water, that had been there for a long time, well before the Commission. So, the bulk of the lot would be the back portion but there would be 36 feet plus 12 feet, so 48 feet of frontage, which is short of 200. The land division history is complicated but we've boiled it down to the key three transactions that are worthy of understanding and figuring out how to resolve. We've given this background to Lauren and the Attorney General's office to look at what the legal options are for the Commission to deal with this matter, the subdivision piece and the building permit piece, so that she can provide you with legal advice. The Commission can then make a decision about how to move forward today or at some future point so that this can be addressed.

Commissioner Fitzgerald moved to convene to an executive session pursuant to 1 M.R.S. § 405(6)(E) to discuss, with legal counsel, its options for pursuing and resolve possible land use violations;  
Commissioner Billings seconded; Vote: 8-0-0-0 Unanimous

The Commission reconvened from an executive session and discussed the matter further.

Commissioner Everett moved to authorize the staff to make settlement negotiations with the Coxes;  
Commissioner Fitzgerald seconded; Vote: 8-0-0-0 Unanimous

Commissioner Worcester further directed staff to come up with some solution to the illegal subdivision that was created. One suggestion was to see if the parties would unwind the transactions that took place to get back to some sort of legal status and the other was for staff to come up with a different solution.

#### OTHER MATTERS

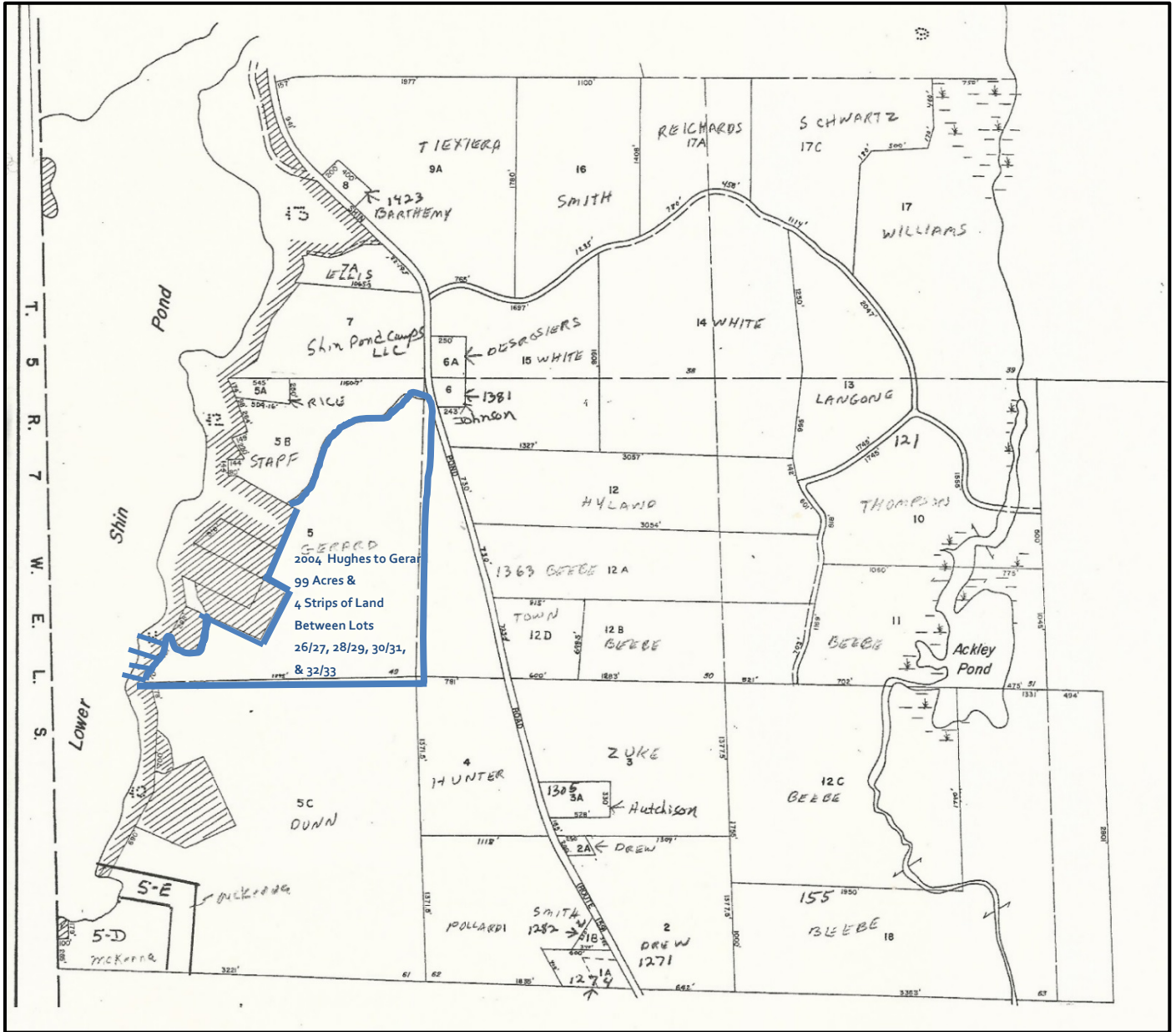
N/A

ADJOURN: Meeting adjourned at approximately 1:00pm.

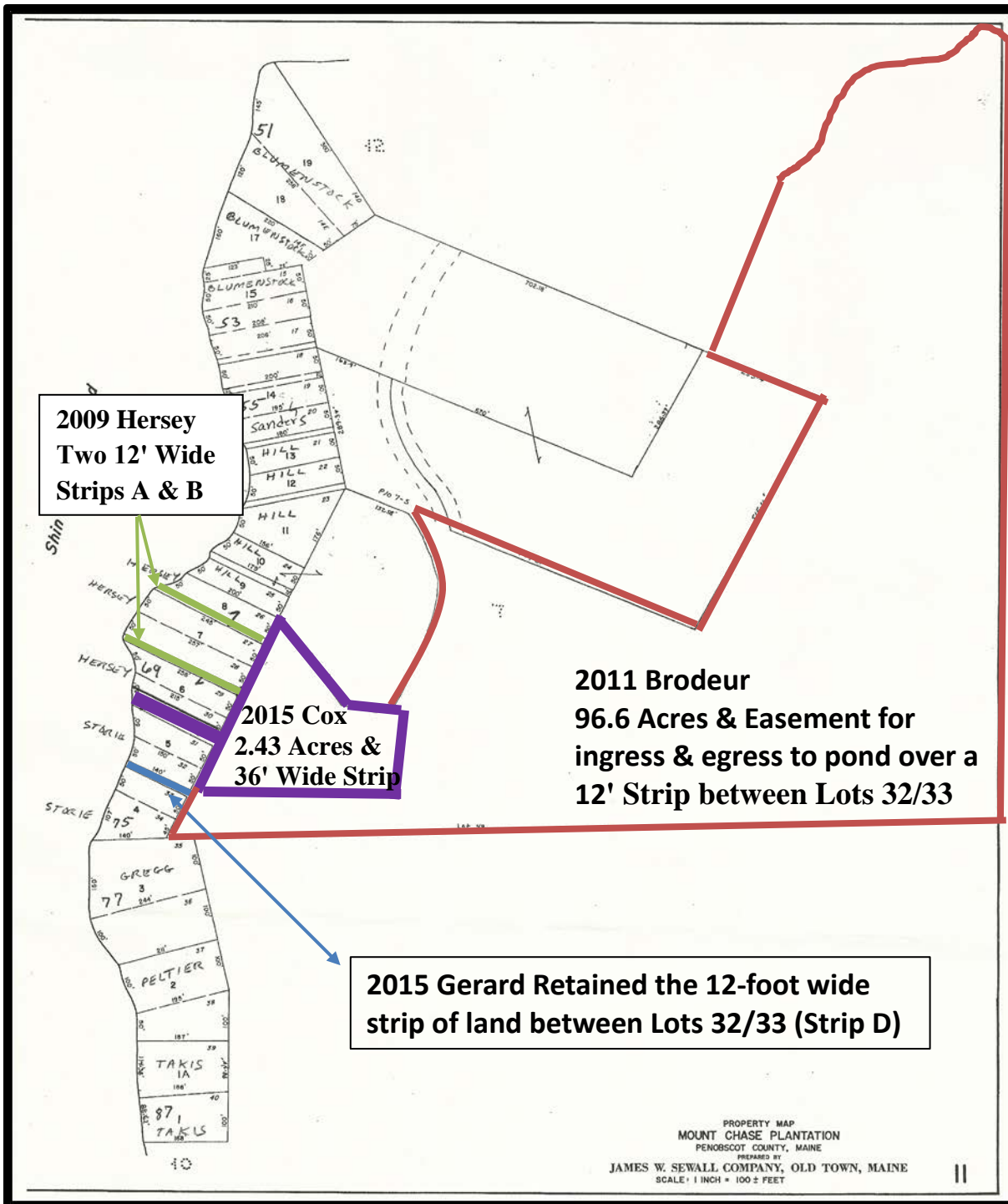
## **ATTACHMENT B**

### **Land Division Maps**





**Parent Parcel**  
**June 2, 2004**  
**(Ronald J.C. Gerard)**  
**99 Acres**  
**&**  
**Four 12-foot Strips of Land**  
**between Lots 26/27, Lots 28/29, Lots 30/31 & Lots 32/33**



**2009 Hersey  
Two 12' Wide  
Strips A & B**

**2015 Cox  
2.43 Acres &  
36' Wide Strip**

**2011 Brodeur  
96.6 Acres & Easement for  
ingress & egress to pond over a  
12' Strip between Lots 32/33**

**2015 Gerard Retained the 12-foot wide  
strip of land between Lots 32/33 (Strip D)**

PROPERTY MAP  
MOUNT CHASE PLANTATION  
PENOBSCOT COUNTY, MAINE  
PREPARED BY  
JAMES W. SEWALL COMPANY, OLD TOWN, MAINE  
SCALE: 1 INCH = 100 FEET

June 15, 2009. Gerald conveyed Strip A and Strip B to Elliot Hersey. Hersey divided from Lot 30 a 24-foot-wide strip of land to convey to Gerald to resolve a property dispute between the parties. Strip C and the 24-foot wide strip of land conveyed to Gerard were abutting strips. The combined 36-foot wide strip of land is referred to as “Strip E”.

April 30, 2011. Gerard conveyed 96.6 acres of his 99-acre parcel to Todd and Carol Brodeur. Ronald Gerard retained a 2.5-acre lot, including Strip D and Strip E.

July 1, 2015. Gerard conveyed a 2.43-acre back lot portion of his remaining 2.5-acre lot to David Cox and Ashely Cox. In a separate deed on the same date, Gerard conveyed the waterfront Strip E to the Coxes. After this conveyance, Ronald Gerard only retained a single 12-foot wide strip of land, Strip D.

## **ATTACHMENT C**

### **Administrative Settlement Agreement to Enforcement Case EC 2018-26**



The four 12-foot wide strips of land are shown on the “Plan of Easterly Shore, Lower Shin Pond Camp Lots Situated on Tract No. 49,” dated August 1934, recorded in the Penobscot Registry of Deeds in Plan Book 25, Page 26 (“Lower Shin Pond Camp Plan”), and are situated between Lots 26 and 27 (“Strip A”), Lots 28 and 29 (“Strip B”), Lots 30 and 31 (“Strip C”), and Lots 32 and 33 (“Strip D”).<sup>1</sup> The narrow shorefront lots were created in 1934.

On June 15, 2009, Ronald Gerard conveyed Strip A and Strip B to Elliot Hersey.<sup>2</sup> Elliot Hersey divided from Lot 30 within the Lower Shin Pond Camp Plan a 24-foot-wide strip of land to convey to Ronald Gerard to resolve a property dispute between the parties.<sup>3</sup> Strip C referenced above and the 24-foot wide strip of land conveyed to Gerard were abutting strips. The combined 36-foot wide strip of land is referred to as “Strip E” in this Agreement.

On April 30, 2011, Ronald Gerard conveyed 96.6 acres of his 99-acre parcel to Todd and Carol Brodeur. Ronald Gerard retained a 2.5-acre lot, including Strip C, Strip D, and Strip E.

On July 1, 2015, Ronald Gerard conveyed a 2.43-acre back lot portion of his remaining 2.5-acre lot to David Cox and Ashely Cox.<sup>4</sup> In a separate deed on the same date, Ronald Gerard conveyed the waterfront Strip E to the Coxes.<sup>5</sup> After this conveyance, Ronald Gerard only retained a single 12-foot wide strip of land, Strip D.

The Coxes’ property is a single, merged lot for the purpose of the Commission applying *Land Use Districts and Standards*, 01-672 C.M.R. 10 (last amended June 17, 2019) (“Chapter 10”). Two or more contiguous lots in the same ownership that individually do not meet dimensional requirements shall be combined to the extent necessary to meet the dimensional requirements. Ch. 10, § 10.11(E)(5). Because Strip E does not meet the minimum lot size requirement of 40,000 square feet pursuant to Ch. 10, § 10.26(A)(1), it is merged with the 2.43-acre back lot with which it is contiguous and under the same ownership.

The Coxes merged lot includes just 36 feet of frontage on Lower Shin Pond and therefore does not meet the minimum shoreline frontage requirement of 200 feet per dwelling unit for residential uses pursuant to Ch. 10, § 10.26(B)(2)(a).

*b. Subdivision*

Except as provided in 12 M.R.S. § 682-B, subdivision means a division of an existing parcel of land into 3 or more parcels or lots within any five-year period, whether this division is accomplished by platting of the land for immediate or future sale, by sale of land or by leasing. When a parcel is divided, the land retained by the person dividing the land is always counted in determining the number of lots created unless the lot retained qualifies for any of the exemptions listed in Ch. 10, § 10.25(Q)(1)(g). For the purposes of the definition of a subdivision in 12 M.R.S. § 682(2-A), an existing parcel shall include the contiguous area within one township, plantation, or town owned or leased by one person or group of persons in common ownership. Ch. 10, § 10.25(Q)(1).

---

<sup>1</sup> Penobscot County Registry of Deeds, Book 9366, Page 300.

<sup>2</sup> Penobscot County Registry of Deeds, Book 11800, Page 218.

<sup>3</sup> Penobscot County Registry of Deeds, Book 11800, Page 221.

<sup>4</sup> Penobscot County Registry of Deeds, Book 13888, Page 311.

<sup>5</sup> Penobscot County Registry of Deeds, Book 13888, Page 313.

Pursuant to Ch. 10, § 10.25(Q)(1)(g)(2), a lot is not counted as a lot for the purposes of subdivision if it is retained by the person dividing the land, and for a period of at least 5 years:

- (a) is retained and not sold, platted, leased, conveyed or further divided, except for transfer to an abutter pursuant to Section 10.25,Q,1,g,(3) below; and
- (b) is used solely for forest or agricultural management activities and associated structures and development such as buildings to store equipment or materials used in forest or agricultural management activities, land management roads, driveways consistent with forest or agricultural management activities, or natural resource conservation purposes.

Strip D, an approximately 12-foot wide by 200-foot deep strip of land along the shore of a pond, cannot meaningfully be used solely for forest or agricultural management activities and therefore does not qualify as an exempt lot. Thus, the land divisions between Ronald Gerard, Todd and Carol Brodeur, and the Coxes between 2011 and 2015, as described above, created three lots within a five-year period: the Brodeur lot, the Cox lot, and Gerard's Strip D. The Commission seeks to resolve the subdivision violation with Ronald Gerald outside of this Agreement.

*c. Permitting*

On August 18, 2015, the Coxes submitted a building permit application to the Commission seeking approval for the construction of a residential dwelling on what they identified as their 2.43-acre lot. The Coxes did not identify on their building permit application that they additionally owned contiguous Strip E on Lower Shin Pond. This omission is material to the Commission's review and decision on the building permit application. Because the 2.43-acre back lot is merged with Strip E and because Strip E includes frontage on Lower Shin Pond, the Commission's dimensional requirements for minimum shoreline frontage apply when considering residential development of the lot. The minimum shoreline frontage for lots on a body of standing water 10 acres or greater in size is 200 feet per dwelling for residential uses. Ch. 10, § 10.26(B)(2)(a). The Coxes' lot, which includes just 36 feet of shoreline frontage, lacks the minimum shoreline frontage required for the 12-foot by 24-foot residential dwelling proposed in their building permit application and subsequently approved by the Commission on August 25, 2015 (Building Permit BP 15442). Also material to the Commission's review and omitted from the application was all relevant land division history, which, in full light, reveals that the Coxes' lot is part of an unapproved subdivision created by Ronald Gerard. In approving an application pursuant to 12 M.R.S. § 685-B, and in the case of an application for a structure upon any lot in a subdivision, that the subdivision must have received prior the approval of the Commission. 12 M.R.S. § 685-B(1)(B). Because the Coxes' lot is part of a subdivision created without Commission approval, the Commission would not have been able to approve the Coxes' application for the new dwelling.

The Commission's building permit application form includes a certification statement that must be signed by all applicants. Included in that certification is statement that "I understand that I am ultimately responsible for complying with all applicable regulations and with all conditions and limitations of any permits issued to me by the [Commission]." The Coxes affirmed the application certification statement with their signatures, dated August 3, 2015. In fact, the Coxes omitted factual information material to the Commission's review and decision, specifically information identifying that the backlot lot was merged with the waterfront lot. In effect, the

Coxes erected a structure on a lot not accurately described in either the permit application or the resulting permit decision

*d. Certificate of compliance*

The Coxes constructed their dwelling, as proposed and approved in BP 15442, on the back portion of their lot—at a distance of more than 250 feet from the shoreline of the pond. Because the dwelling was constructed on a lot that does not include sufficient shoreline frontage, the Coxes are not able to obtain a certificate of compliance from the Commission stating that the requirements and conditions of approval have been met, a requirement set forth in 12 M.R.S. § 685-B(8).

7. Violations. By erecting a structure on a lot that contains insufficient frontage on Lower Shin Pond, the Coxes violated 12 M.R.S. § 685-B(1)(A) and Chapter 10, § 10.26(B)(2)(a).

Certificates of compliance. It shall be unlawful to use or occupy or permit the use or occupancy of any land, structure, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structural form, requiring subsequent review and approval pursuant to this subchapter, until a certificate of compliance has been issued therefor by the commission stating that the requirements and conditions of approval have been met. 12 M.R.S. § 685-B(8).

On January 6, 2020, the Commission issued a Notice of Violation (NOV) for the alleged violations described in paragraph 6 of this Agreement and cited in paragraph 7 of this Agreement.

In order to occupy the dwelling, the Coxes must obtain a certificate of compliance from the Commission. The Commission is not able to issue a certificate of compliance because the requirement to include a minimum of 200 feet of shoreline frontage for the residential dwelling has not been met. In consideration of the circumstances surrounding the creation of Strip E—that is, a lot created from the merger of a 12-foot-wide strip created 1934 with a 24-foot-wide strip created in 2009—the Commission finds that the sale of Strip E to the Coxes did not result in Strip E becoming more nonconforming with respect to shoreline frontage requirements. While the Coxes' contiguous lot does not include sufficient shoreline frontage for development with a residential dwelling, the Commission recognizes that the Coxes were not a party to the creation of Strip E and does not seek to require removal of the dwelling from the lot—the only option for injunctive relief. Instead, the Commission seeks to resolve this matter and release its causes of action against the Coxes through the conditions stipulated in paragraph 10 of this Agreement.

8. Official record. This Agreement shall not be effective nor become part of the official record unless and until it is ratified by the Commission.
9. Conditions. To resolve the violations described in paragraph 6 of this Agreement and cited in paragraph 7 of this Agreement, the Coxes agrees to:
  - a. Within 10 days of signature by all parties hereto, pay a civil penalty of five thousand dollars (\$5,000). The payment must 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. The existing 12-foot by 24-foot dwelling, as constructed and approved in BP 15442, may remain on the property in its current location provided compliance with all of the terms and conditions of this Agreement. Notwithstanding the merged lot's nonconformance with respect to minimum shoreline frontage, the 2.43-acre back lot may be developed in accordance with all other Commission land use standards applicable at the time development is proposed, and then only after receiving permit approval from the Commission. Except for a 6-foot-wide footpath and a temporary docking structure, no development is allowed on Strip E, the 36-foot-wide strip of land extending from the Coxes' backlot to Lower Shin Pond.
  - c. The Coxes must 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 is binding upon Coxes, 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 is subject to this Agreement and bound to comply with the terms hereof as if that person were the Coxes.
  - d. Within 10 days of signature by all parties hereto, the Coxes must submit to the Commission the recording fee in the amount of \$29.00 to be paid to the Penobscot County Registry of Deeds, for the recording of this Agreement in the Penobscot County Registry of Deeds. Payment must be by check or money order, made payable to the Penobscot County Registry of Deeds. Upon receipt of payment, staff will record this Agreement in the Penobscot 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 the Coxes fail to submit the appropriate recording fee, the Commission may record this Agreement in the Penobscot County Registry of Deeds without waiver of the violation caused by Coxes' failure to do so.
10. 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 release their causes of action against the Coxes arising from the violations described in Paragraphs 6 through 8 of this Agreement.

SIGNATURES FOLLOW



Respondents

By: \_\_\_\_\_ Date: \_\_\_\_\_  
David Cox

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Ashley Cox

STATE OF MAINE

County of Penobscot, ss.

Date: \_\_\_\_\_

Personally appeared the above named David Cox and Ashley Cox and acknowledged the foregoing to be his/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: \_\_\_\_\_  
Judy Cooper East, Director

STATE OF MAINE

County of Kennebec, ss.

Date: \_\_\_\_\_

Personally appeared the above named Judy Cooper East, 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 Maine Attorney General

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Lauren E. Parker, AAG

## **ATTACHMENT D**

### **Abutter Objection to Administrative Settlement Agreement to Enforcement Case EC 2018-26**

PATRICK E. HUNT, P.A.

ATTORNEY AT LAW  
SEVEN SHERMAN STREET  
POST OFFICE BOX 130  
ISLAND FALLS, MAINE 04747-0130

PATRICK E. HUNT, ESQ.  
MAINE BAR # 2707  
FEDERAL BAR # 1466  
MASS. BAR # 244550

Tel. 207-463-2285  
Fax. 207-463-2226  
Email: pat@patrickehuntpa.com

January 30, 2020

RECEIVED  
FEB 03 2020  
LUPC - AUGUSTA

Judy Cooper East, Director  
State of Maine  
Department of Agriculture, Conservation & Forestry  
Land Use Planning Commission  
22 State House Station  
Augusta, Maine 04333

In Re: David Cox and Ashley Cox  
Case # EC 2018-26

Dear Judy,

I represent Michael E. Storie, David B. Storie, and Jay T. Storie.

Enclosed please find my Petition to Intervene and Motion to Continue.


They object strenuously to your proposed Administrative Settlement Agreement.

We intend to be present at any proposed hearings, and for that reason, would you please contact me with any proposed dates, as my clients must travel great distances.

My clients are also concerned that they never received Notice or opportunity to be heard, as required by statute.

Thank you for your consideration.

Very truly yours,

  
Patrick E. Hunt  
Attorney at Law

PEH/jng

cc: Michael Storie  
David Storie  
Jay Storie

STATE OF MAINE  
LAND USE PLANNING COMMISSION

RE: EC 2018-26 Enforcement case, David and Ashley Cox

PETITION TO INTERVENE

NOW COME Petitioners, Michael Storie and Richard Storie, pursuant to Rule 5.13 of the Rules of the Land Use Planning Commission (LUPC) and petition for leave to intervene as parties in EC 2018-26 for the following reasons:

1. Petitioner are adjoining landowners of the Cox property which is the subject of these proceedings, located on Lower Shin Pond in Mount Chase Township, Penobscot County, Maine. Petitioners have just recently learned that despite their ongoing objections to the construction on the Cox property dating back to 2015, LUPC has proposed an Administrative Settlement Agreement with the Coxes which will not result in the removal of the construction which was built in violation of land use regulations and with permits which were obtained by deception and/or fraud.

2. Petitioners are informed by Debra A. Kaczowski of the LUPC that the proposed Administrative Settlement Agreement is to be scheduled before the Commission for ratification at its February 2020 meeting, pending the Coxes' signatures.

3. Petitioners were not given notice or the opportunity to object to the Administrative Settlement Agreement, and wish to be heard on the matter. Petitioners' rights may be substantially and directly affected by these proceedings, as they are abutting landowners.

4. Pursuant to LUPC Rule 5.08(5), Petitioners seek a continuance of this matter and the holding of a public hearing, with notice and an opportunity to be heard for all abutting landowners, interested persons, and the public in this matter. A continuance is needed because petitioners' motion to intervene has not yet been acted on, the petitioners anticipate that their attorney will need time to prepare their case for public hearing, and petitioners need time to prepare factual and historical data relating to the Cox's unpermitted construction activities in this matter.

WHEREFORE, Petitioners move for leave to intervene in the above-referenced proceedings and move for a continuance of a public hearing to be held in this matter.

Dated: 1-23-20

  
Patrick E. Hunt, Esq.  
Patrick E. Hunt, P.A.  
7 Sherman Street  
Post Office Box 130  
Island Falls, Maine 04747  
207-463-2285  
Bar #2707

Attorney for Petitioners