

ADMINISTRATIVE CONSENT AGREEMENT

This Administrative Consent Agreement (“Agreement”) is entered into by and among the Town of Freeport, a municipal corporation organized and existing under the laws of the State of Maine with an address of 30 Main Street, Freeport, Maine 04032 (the “Town”), Cleveland P. Kapala, Trustee of the Cleveland Kapala Revocable Trust of 1992, u/t/a dated March 2, 1992 (the “Kapala Trust”) and Lucia P. Kittredge, Trustee of the Lucia Kittredge Revocable Trust of 1992, u/t/a dated March 2, 1992 (the “Kittredge Trust”), (the Kapala Trust and the Kittredge Trust hereinafter collectively referred as the “Landowner”, and the Landowner and the Town hereinafter collectively referred as the “Parties”).

WHEREAS, on August 2, 2019, Landowner purchased property located at 28 Cunningham Road in the Town of Freeport and further identified as Lot 32A on Town of Freeport Tax Map 5A (the “Property”). Cleveland P. Kapala and Lucia P. Kittredge have thereafter used the Property as their personal residence;

WHEREAS, at the time of purchase, the Property was improved with a dwelling (the “Dwelling”) and associated wooden deck (the “Deck”), a stone patio (approx. 463 square feet) adjacent to the dwelling (the “Patio”), a stone walkway (approx. 169 square feet) leading from a gravel driveway to the Patio and the dwelling (the “Walkway”), and a dock, ramp and float system (the “Wharf”) accessible via stairs leading from the Property to Casco Bay;

WHEREAS, Landowner has not made any exterior alterations to the Dwelling or Deck, has not made any alterations to the Patio, Walkway, or Wharf, nor has Landowner removed any vegetation from the Property at any point since acquiring the Property;

WHEREAS, on April 28, 2022, the Town Code Enforcement Officer (“CEO”) conducted an inspection of the Property and observed several conditions that the CEO concluded were violations of the Town’s Shoreland Zoning Ordinance (“SZO”) committed by prior owner(s) of the Property, and on June 8, 2022 issued a Notice of Violation (“NOV”) alleging a series of violations of the SZO at the Property.

WHEREAS, as set forth in greater detail below, Landowner has addressed a number of the alleged violations through applications for after-the-fact permits or by hiring appropriately licensed professionals to fix building, plumbing, and electrical code conditions that do not meet current standards, but some of the remaining conditions listed in the NOV cannot be permitted under the Town’s current SZO;

NOW, THEREFORE, the Town, within the scope of its authority, and the Landowner agree as follows:

1. The Town agrees to waive all civil penalties in light of the corrective measures taken by the Landowner and unique circumstances related to this situation, as further summarized herein.
2. All expenses related to the preparation and execution of this agreement, including legal fees, shall be borne by the party incurring the expense.

3. **Wharf.** The Parties acknowledge that neither the Town nor the Maine Department of Environmental Protection (“DEP”) had any record of permits being issued for the Wharf. Landowner has since applied to the DEP for an after-the-fact Natural Resources Protection Act (“NRPA”) permit, which was approved on August 21, 2023; applied to the US Army Corp of Engineers, which approval was granted on April 28, 2023; and applied for a permit from the Freeport Coastal Waters Commission, which was approved on May 8, 2024.

4. **Building, Plumbing and Electrical Codes.** The NOV alleges several violations of local building, plumbing, and electrical codes. The concerns in the NOV relating to plumbing, and electrical conditions have been addressed to the Town’s satisfaction. Landowner agrees to secure a building permit for any future building expansion or basement renovation. Landowner further agrees that the Town may inspect the progress of this work as reasonably required to ensure that all conditions in the NOV regarding building, plumbing, and electrical codes are brought up to current code standards. Upon satisfactory completion of the foregoing work, the Town agrees to issue to Landowner a certificate of occupancy.

5. **Patio.** The Parties acknowledge that the Patio has been removed by the Landowner and the area has been revegetated.

6. **Walkway.** The Parties acknowledge that a portion of the Walkway (between the Deck and the Patio) has been removed, but the remaining portion of the Walkway is within seventy-five (75) feet of the top of the bank of an unstable bluff and does not meet current setback requirements under the SZO. The Parties further acknowledge that the Town has no record of a permit being issued for the installation of the Walkway, nor does the Town or the Landowner have any record of when the Walkway was originally installed. The current dimensions of the Walkway are depicted on Exhibit A. Given the age of the other structures on the Property, it is possible that the Walkway is a legally nonconforming condition, and in light of this uncertainty, the Town will not require removal of the Walkway, provided that certain conditions are met as provided in Paragraph 8 below.

7. **Deck.** The Parties acknowledge that the original Deck was 10’ by 15’ in size, and that the current Deck is 12’ by 20’ in size as depicted on Exhibit A. The Parties further acknowledge that the Town has no record of a permit being issued for the expansion of the Deck. However, the Town believes that the Deck was expanded towards the water by approximately 2 +/- feet to align with the shoreland side of the dwelling in or around 1995, but acknowledges that the Deck expansion did not reduce the shortest existing non-conforming setback from the shore, and therefore could have been permitted when it was expanded. In light of the overall circumstances on the Property, the Town will not require removal of any portion of the Deck, provided that certain conditions are met as provided in Paragraph 8 below.

8. **Requirements for Impervious Surfaces and/or Structures to Remain.** The Deck and the impervious surfaces created by the remaining portion of the Walkway on the Property as outlined in Paragraphs 6 & 7 above, shall be allowed to remain on the property subject to the terms, conditions and restrictions described herein: (a) No expansion of the Walkway or Deck shall be permitted except in conformance with Town ordinance requirements then in effect, and

then only in conformance with rules pertaining to nonconforming conditions and structures; (b) any future maintenance or repair of the Walkway or Deck must comply with all applicable Town ordinance requirements then in effect; (c) if any portion of the Walkway or Deck is destroyed or removed by more than fifty percent (50%), then these areas impacted by the destruction or removal shall be required to be revegetated and not reconstructed in accordance with the Town's Shoreland Zoning Ordinance.

9. Dwelling. The Parties acknowledge that the original dwelling was built in 1957 and had a footprint of 720 square feet, and further acknowledge that the dwelling was expanded at some point after 1957 and currently has a footprint of 840 square feet (884 square feet including roof overhangs, as shown on Exhibit A). In 1995, the Town issued to a prior owner of the Property a building permit (#95-125) authorizing the installation of a "new foundation under existing cottage." Because the NOV acknowledges that the footprint of all structures within the shore setback as of January 1, 1989 "appears to be one thousand one hundred fifty-six (1,156) square feet", which would allow for an expansion of up to a total of one thousand five hundred two point eight (1,502.8) square feet, the Parties agree that any future expansion of the footprint of any structure within the shoreland setback must comply with this limit under the SZO in effect at time of permit submission.

10. If the Landowner or their heirs, successors, and assigns fail to comply with any requirements of this Agreement, the Town then may pursue all remedies available to it including, but not limited to, instituting appropriate court proceedings to enforce the requirements of any of the Town's Ordinances or to seek enforcement of the terms of this Agreement, including all costs incurred by The Town in the enforcement of this Agreement, including the Town's attorneys' fees.

11. This Agreement represents the entire agreement between the parties as to the matters specifically addressed herein. Any modification of this Agreement shall be made in writing and signed by the parties.

12. This Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto, and their heirs, successors and assigns, and shall run with the Property.

13. The terms of this Agreement shall be subject to the same adoption process (including notice, a public hearing, adoption by the Council) applicable to all amendments to the Town's Shoreland Zoning Ordinance.

14. This Agreement shall be recorded by the Town in the Cumberland County Registry of Deeds, shall run with the land, and shall be binding on the Landowner of their heirs, successors, and assigns.

IN WITNESS WHEREOF, the Parties set forth their respective hands on the dates set forth below, as their respective free act and deed.

Done and dated at Freeport, Maine
this ____ day of _____, 2024

Accepted and dated at _____, _____
this ____ day of _____, 2024

Cleveland Kapala Revocable Trust of 1992, u/t/a dated March 2, 1992

Cleveland P. Kapala, Trustee

Lucia P. Kittredge, Trustee

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 2024

Personally appeared the above-named Cleveland P. Kapala and Lucia P. Kittredge, individually and in their capacity as registered trustees of Cleveland Kapala Revocable Trust of 1992, u/t/a dated March 2, 1992 and acknowledged the foregoing instrument to be their free act and deed in their said capacity and the free act and deed of said Trust.

Notary Public/Attorney at Law

TOWN OF FREEPORT

By: _____
Sophia L. Wilson,
Its duly authorized Town Manager

STATE OF MAINE
COUNTY OF CUMBERLAND, ss.

_____, 2024

Personally appeared the above-named Sophia L. Wilson and acknowledged the foregoing instrument to be her free act and deed in her capacity and the free act and deed of said Town of Freeport.

Notary Public/Attorney at Law