STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
194 MAIN STREET
EAST MILLINOCKET, MAINE 04430

PAUL R. LEPAGE
GOVERNOR

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COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

PERMIT

AMENDMENT A TO BUILDING PERMIT BP 15221 (AFTER-THE-FACT) BY SPECIAL EXCEPTION

The staff of the Maine Land Use Regulation Commission, after reviewing the application and supporting documents submitted by Gregory C. and Terry A. Clukey for Amendment A to Building Permit BP 15221, finds the following facts:

1. Applicant: Gregory C. and Terry A. Clukey
   PO Box 184
   West Enfield, ME 04493

2. Date of Completed Application: November 18, 2014

3. Location of Proposal: Orneville Township, Piscataquis County, Maine
   Maine Revenue Service Map PI082; Plan 06; Lots 85 & 85.1
   Piscataquis County Registry of Deeds: Book 1678, Page 246 & Book 2255; Page 51

4. Zoning: (D-RS) Residential Development Subdistrict
   (P-FP) Flood Prone Area Protection Subdistrict by Virtue of Section 10.23,C,2 of the Commission's Land Use Districts and Standards

5. Lot Size: 0.29 Acres (owned)

6. Principal Building: Existing Residential Dwelling Unit (30 ft. by 20 ft.by 20 ft)

7. Accessory Structures: Existing Shed/Privy (12 ft. by 8 ft.)
   Proposed Privy/Shed (16 ft. by 12 ft. by 13 ft.)

8. Sewage Disposal: Existing Privy
   Proposed Replacement Privy with Replacement System Variance

9. Affected Waterbody: Boyd Lake

   The Commission has identified Boyd Lake as a management class 5, resource class 1B, accessible, developed lake with the following resource ratings: significant fisheries resources,

significant cultural resources, outstanding physical resources.

Background

10. The applicants' lot was historically developed with a 30 ft. by 20 ft. seasonal camp and a 12 ft. by 8 ft. privy/shed.

11. On July 17, 2014, staff issued Building Permit BP 15221 to Gregory C. and Terry A. Clukey authorizing the construction of a 30 ft. by 30 ft. residential parking area to be set back a minimum of 100 feet from the normal high water mark of Boyd Lake, 50 feet from the road, and 15 feet from the nearest property boundary line.

12. In October of 2014, staff discovered that the applicant had reconstructed the 12 ft. by 8 ft. privy/shed and expanded it into a 16 ft. by 12 ft. privy/shed without a permit from the Commission and without prior permit approval from the local plumbing inspector for the replacement system [Reference: Enforcement Case EC 14-63; Resolved with this permit].

Proposal

13. The applicants now seek after-the-fact approval for reconstruction and expansion of the privy/shed to its current measurement of 16 ft. by 12 ft. and for the replacement of the existing privy. The applicant has submitted a copy of the replacement system design by the site evaluator and permit approval from the Local Plumbing Inspector for the replacement system variance.

14. Although the Commission's Land Use Guidance Map for Orneville Township identifies the applicants' lot as being within a (D-RS) Residential Development Subdistrict, according to the Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Map (FIRM) for Orneville Township, Piscataquis County, the applicant's lot is located entirely within Zone A, an an area of 100-year flood (reference the National Flood Insurance Act of 1968 P.L. 90-48, as amended). The after-the-fact shed/privy would not constitute a substantial improvement and therefore, does not require that the structure meet any elevation requirements.

Review Criteria

15. Pursuant to Section 10.23,C,2 of the Commission's Land Use Districts and Standards, the Flood Prone Protection Subdistrict is described as: areas located within the 100-year frequency floodplain, also known as areas of special flood hazard, as identified by the Commission after consideration of relevant data including, without limitation, areas determined to be flood prone by state or federal agencies, including the Flood Insurance Studies and accompanying Flood Insurance Rate Maps or Flood Hazard Boundary Maps prepared by the Federal Emergency Management Agency, historical data, and the National Cooperative Soil Survey.

    The areas identified by FEMA as areas of special flood hazard (Zones A, AE, A1-30, VE) on Flood Insurance Rate Maps or Flood Hazard Boundary Maps for townships, plantations, or towns qualify as flood prone areas appropriate for protection within this subdistrict. The Commission adopts the FEMA maps as listed in Appendix E, and a note on the Official Land Use Guidance

Map shall refer to maps so adopted. In any case where the boundaries of the P-FP subdistrict on the Commission map differ from the boundaries of the FEMA zones, the FEMA boundaries shall apply. The FEMA zones shall be regulated according to the provisions of the P-FP subdistrict.

16. Pursuant to Section 10.23,C,3,d,(4) of the Commission's Land Use Districts and Standards, residential, single family dwellings, including their reconstruction, relocation, or replacement; new construction, reconstruction or replacement of a permanent foundation; substantial improvement or accessory structures may be may be allowed within a (P-FP) Flood Prone Area Protection subdistricts or FEMA zones A, AE, A1-30, or VE as special exceptions upon issuance of a permit from the Commission pursuant to 12 M.R.S.A. §685-A(10), and subject to the applicable requirements set forth in Sub-Chapter III, provided that the applicant shows by substantial evidence that (a) there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant; (b) the use can be buffered from those other uses and resources within the subdistrict with which it is incompatible; and (c) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan.

17. Pursuant to Section 10.25,T,2,a of the Commission's Land Use Districts and Standards, development in flood prone areas, including areas of special flood hazard, shall: (1) be designed or modified and adequately anchored to prevent flotation (excluding floating piers and docks), collapse or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy; (2) use construction materials that are resistant to flood damage; (3) use construction methods and practices that will minimize flood damage; and (4) use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.

18. Pursuant to Section 10.25, T, 2, j of the Commission's Land Use Districts and Standards, accessory structures, as defined, located within Zones A1-30, AE, and A, shall be exempt from the required elevation criteria if all other requirements of Section 10.25,T and the following are met. Exempt accessory structures shall: (1) Be 500 square feet or less and have a value less than $3000; (2) Have unfinished interiors and not be used for human habitation; (3) Have hydraulic openings, as specified in Section 10.25,T,2,l,(2), in at least two different walls of the accessory structure; (4) Be located outside the floodway, as determined by the provisions of Section 10.25,T,2,k,; (5) When possible be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and be placed further from the source of flooding than is the primary structure; and (6) Have only ground fault interrupt electrical outlets. The electric service disconnect shall be located above the base flood elevation and when possible outside the Area of Special Flood Hazard.

19. Under provisions of Section 10.26,D,1 of the Commission's Land Use Districts and Standards the minimum setback for residential structures is 100 feet from waterbodies such as Boyd Lake and 50 feet from the travel portion of the roadway.

20. 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.

21. Pursuant to Section 10.11,C,2,a of the Commission's Land Use Districts and Standards, reconstruction or replacement must comply with current minimum setback requirements to the maximum possible extent. In determining whether the proposed reconstruction or replacement meets the setback to the maximum possible extent, the Commission may consider the following factors:
    - size of lot,
    - slope of the land,
    - potential for soil erosion and phosphorus export to a water body,
    - location of other legally existing structures on the property at the time of the damage, destruction or removal,
    - location of the septic system and other on-site soils suitable for septic systems at the time of the damage, destruction or removal,
    - type and amount of vegetation to be removed to accomplish the relocation, and
    - physical condition and type of existing foundation, if any.

22. Pursuant to Section 10.11,B,7 of the Commission's Land Use Districts and Standards, all changes to legally existing nonconforming structures, structures for nonconforming uses or structures on nonconforming lots must comply with the Maine State Subsurface Waste Water Disposal Rules (144A CMR 241), including changes that do not require a permit under this rule.

23. The facts are otherwise as represented in Building Permit BP 15221, Amendment A application to Building Permit BP 15221, and supporting documents.

Based upon the above Findings, the staff concludes that:

1. The applicant's proposal would be allowed in the FEMA Zone A as a special exception under the provisions of Section 10.23,C,3,d,(4) of the Commission's Land Use Districts and Standards in that: the applicant's lot is located entirely within the FEMA Zone A, therefore, there is no suitable alternative site outside the FEMA Zone A on the lot to locate the privy shed; there are other residential uses in the area with which it is compatible; and would be in compliance with the provisions of Section 10.25,T.

2. The after-the-fact reconstruction of the shed/privy would not be in compliance with the provisions of Sub-Chapter III of the Commission's Land Use Districts and Standards in that it would be located less than 100 feet from the normal high water mark of Boyd Lake and less than 50 feet from the traveled portion of the road.

3. The after-the-fact shed/privy would be in compliance with Section 10.11,B,6 of the Commission's Land Use Districts and Standards in that the road setback has been reduced to no less than 20 feet in order to allow the shed/privy to be less nonconforming to the water body setback.

4. The after-the-fact shed/privy would be in compliance with Section 10.11,C,2,a of the Commission's Land Use Districts and Standards in that the shed/privy cannot be more conforming with respect to the waterbody setbacks due to on-site soils suitable for the replacement septic system, size of the lot, and location of the existing dwelling to which it

serves.

5. The after-the-fact shed/privy would be in compliance with Section 10.11,B,7 of the Commission's Land Use Districts and Standards in that the applicants received Local Plumbing Inspector approval for the replacement privy with variance which meets the requirements of the Maine Subsurface Wastewater Disposal Rules (144A CMR 241).

6. 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 Gregory C. and Terry A. Clukey with the following conditions:

1. 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.

2. 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.

3. The permitted 16 ft. by 12 ft. privy/shed authorized under this permit, must be set back a minimum of 70 feet from the normal high water mark of Boyd Lake, 20 feet from the access road, and 15 feet from other property boundary lines.

4. The permitted structure must be designed or modified and adequately anchored to prevent flotation (excluding floating piers and docks), collapse or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

5. The permitted structure must use construction materials that are resistant to flood damage; use construction methods and practices that will minimize flood damage; and use electrical, heating, ventilation, plumbing, and air conditioning equipment, and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during flooding conditions.

6. The permitted structure must be 500 square feet or less and have a value less than $3,000, and have unfinished interiors and not be used for human habitation.

7. The permitted structure must have openings in at least two different walls having a total net area of not less than one square inch for every square foot of the enclosed area, must have the bottom of all openings no higher than one foot above the lowest grade. The openings must permit the entry and exit of flood waters automatically without any external influence or control such as human intervention, including the use of electrical and other non-automatic mechanical means. The shed must also have only ground fault interrupt electrical outlets. The electric service

disconnect shall be located above the base flood elevation and when possible outside the Area of Special Flood Hazard.

8. 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. 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.

9. The permittee shall secure and comply with all applicable licenses, permits, and authorizations of all federal, state and local agencies, including, but not limited to, natural resources protection and air and water pollution control regulations and the Subsurface Wastewater Disposal Rules of the Maine Department of Environmental Protection and the Maine Department of Human Services.

10. 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.

11. Once construction is complete, the permittee 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.

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 14-63, or to be considered a waiver of the authority of the Commission or the state to fully pursue or prosecute such violations.

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 19th DAY OF NOVEMBER, 2014.

By: Debra A. Kazanski

for Nicholas Livesay, Executive Director