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

PAUL R. LEPAGE
GOVERNOR

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

PERMIT

AMENDMENT D TO
BUILDING PERMIT BP 9290
BY SPECIAL EXCEPTION

The staff of the Maine Land Use Regulation Commission, after reviewing the application and supporting documents submitted by Michael W. and Patricia S. Emery for Amendment D to Building Permit BP 9290, finds the following facts:

1. Applicant: Michael W. Emery
   Patricia S. Emery
   442 Hudson Road
   Glenburn, Maine 04401

2. Date of Completed Application: May 5, 2015

3. Location: Orneville Township, Piscataquis County, Maine
   Maine Revenue Service Map PI082; Plan 06; Lots 88, 88.1, 89, 89.1, 90, 90.1
   Piscataquis County Registry of Deeds: Book 1210; Page 210

4. Zoning: (P-GP) Great Pond Protection 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: 0.96 Acres (owned)

6. Principal Building: Existing Residential Dwelling (25 ft. by 50 ft. by 25 ft.) with Existing Attached Lake-side Deck (8 ft. by 30 ft.)

7. Accessory Structures: Existing Shed 1 (8 ft. by 16 ft.)
   Existing Shed 2 (8 ft. by 8 ft.)

8. Sewage Disposal: Existing Complete Non-engineered System

9. Soil Profile/Condition/Design: 3/C per Maine Subsurface Wastewater Disposal Rules

10. 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 and Existing Conditions

11. The applicants' lot was historically developed with a 24 foot by 31 foot pre-Commission seasonal camp on a post foundation, an L-shaped 10 foot by 26 foot by 12 foot lake-side deck, a 4 foot by 6 foot mudroom, an 8 foot by 16 foot Shed 1, an 8 foot by 8 foot Shed 2, and a primitive sewage disposal system. The camp, including lake-side deck, was set back 2 feet from the normal high water mark of Boyd Lake, 80 feet from Lake Road North and at least 15 feet from other property boundary lines. Shed 1 was set back 43 feet and Shed 2 was set back 63 feet from the normal high water mark of Boyd Lake. Both Shed 1 and Shed 2 are set back at least 50 feet from Lake Road North and 15 feet form the side property boundary lines.

12. Building Permit BP 9290, issued to Terry and Mary Tondreau on April 30, 1996, authorized the construction of a 16 foot by 24 foot bathroom and living room addition to the seasonal camp and the replacement of the existing primitive sewage disposal system with a combined sewage disposal system located across Lake Road North. The addition was permitted to be set back 12 feet from the normal high water mark of Boyd Lake, 80 feet from Lake Road North and at least 15 feet from the nearest property boundary line. As constructed, the seasonal camp with addition is set back 12 feet from the normal high water mark of Boyd Lake and measures 25 feet by 48 feet.

13. Amendment A to Building Permit BP 9290, issued to Mary Tondreau on February 4, 1999, authorized the extension of the expiration date of Building Permit BP 9290.

14. Amendment B to Building Permit BP 9290, issued to Michael and Patricia Emery on August 12, 1999, authorized the transfer of ownership of Building Permit BP 9290.

15. Amendment B to Building Permit BP 9290, issued to Michael and Patricia Emery on August 12, 1999, authorized the reconstruction of the seasonal camp into a 25 foot by 50 foot single family residential dwelling unit on a permanent foundation with an 8 foot by 30 foot lake-side deck and a 6 foot by 8 foot mudroom. The residence, including the lake-side deck, will be set back 30 feet from the normal high water mark of Boyd Lake, at least 50 feet from Lake Road North, and at least 15 feet from the side property boundary lines.

16. The contiguous lots have 150 feet of water frontage on Boyd Lake and 150 feet of road frontage on Lake Road North. The combined footprint of all legally existing structures within 100 feet of Boyd Lake is 1,730 square feet.

Proposal

17. The applicants now propose to construct a 42 foot by 42 foot residential garage on a permanent foundation to be set back 200 feet from the normal high water mark of Boyd Lake, at least 50 feet from Lake Road North, and at least 15 feet from the side property boundary lines. The applicant further proposes to fill and grade an approximately 41 foot by 75 foot area directly behind the proposed garage and located approximately 250 feet from the normal high water mark of the lake, greater than 100 feet from the access road, and a minimim of 15 feet from property boundary lines.

18. Although the Commission's Land Use Guidance Map for Orneville Township identifies the applicants' property as being within a (P-GP) Great Pond Protection Subdistrict, according to the Federal Emergency Management Agency's effective Flood Insurance Rate Map for Orneville Township, Piscataquis County, the applicants' property is located entirely within an area of 100 year flood. The Base Flood Elevation for Big Boyd Lake has been determined to be 303 feet. State of Maine, Licensed Surveyor Darrell L. Miles has determined that the elevation of the lowest grade immediately adjacent to the proposed structure is 308.4 feet NGVD 1929 and that the top of the bottom floor (including basement, crawlspace, or enclosure floor) would be elevated to 310.0 feet NGVD 1929.

Commission Review Criteria

19. Pursuant to Section 10.23,C,2 of the Commission's Land Use Districts and Standards, the Flood Prone Protection Subdistrict is describes 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."

20. Pursuant to Section 10.23,C,3,d,(4) of the Commission's Land Use Districts and Standards, single family residential dwellings or accessory structures may be allowed within FEMA zones A 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.

21. Pursuant to Sub-Chapter III, Section 10.26 of the Commission's Land Use Districts and Standards, the minimum setback requirements for residential structures include: 100 feet from the normal high water mark of a body of standing water 10 acres or greater in size; 50 feet from the traveled portion of roads; and 15 feet from the side and rear property lines. The maximum height of structures within 500 feet of the normal high water mark of a body of standing water 10 acres or greater shall be no higher than 30 feet.

22. Pursuant to Section 10.11,B,1 of the Commission's Land Use Districts and Standards, permits are required for all expansions, reconstructions, relocations, changes of use, or other development of nonconforming structures, uses and lots, except where specifically provided in this section 10.11. In

order to obtain a permit, the applicant must meet the approval criteria in 12 M.R.S.A. Section 685-B(4) and demonstrate that the project will not adversely affect surrounding uses and resources and that there is no increase in the extent of nonconformance, except in instances where a road setback is waived by the Commission in order to increase the extent of conformance with a waterbody setback.

23. Pursuant to Section 10.25,T,2 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.

24. Pursuant to Section 10.25,T,2,f of the Commission's Land Use Districts and Standards, all new structures within a Flood Prone Area shall have the lowest floor of each structure (the reference level floor), including the basement floor, elevated to at least one foot above the Base Flood Elevation at that location.

25. Pursuant to Section 10.23,C,3,c,(7) of the Commission's Land Use Districts and Standards, filling and grading may be allowed within FEMA zones A upon issuance of a permit from the Comission pursuant to 12 M.R.S.A §685-A(10), and subject to the applicable requirements set forth in Sub-Chapter III.

26. Pursuant to Section 10.27,F,2, of the Commission's Land Use Districts and Standards, filling and grading beyond 250 feet from water bodies, the maximum size of filled or graded areas, shall be 20,000 square feet.

27. The facts are otherwise as represented in Building Permit application BP 9290, subsequent amendment requests, Amendment Request D, and supporting documents.

Based upon the above Findings, the staff Concludes that:

1. In accordance with the provisions of Section 10.23,C,3,d,(4) of the Commission's Land Use Districts and Standards, the proposed garage would be allowed in the FEMA Zone A as a special exception in that: the applicants' entire lot is located in the FEMA Zone A so no alternative site is reasonably available to the applicants, there are other residential uses in the area with which the garage is compatible, and other conditions, such as the development requirements of Section 10.25,T,2 and the elevation requirements of Section 10.25,T,2,f are proposed to be met.

2. In accordance with Section 10.25,T,2,f of the Commission's Land Use Districts and Standards, the lowest floor of the proposed structure would be elevated to at least 1 foot above the Base Flood Elevation of Boyd Lake. The proposal would meet all the applicable requirements set forth in Section 10.25,T.

3. In accordance with Section 10.26 and Section 10.11,B,1 of the Commission's Land Use Districts and Standards, the proposal would not adversely affect surrounding uses and resources, would not increase the combined footprint of structures within 100 feet of the lake and would not increase

the extent of nonconformance in that the residential garage is proposed to be setback 200 feet from the normal high water mark of Boyd Lake, 75 feet from the access road, a minimum of 15 feet from other property boundary lines, and no higher than a maximum of 30 feet in height.

4. In accordance with Section 10.23,C,3,c,(7) and Section 10.27,F,2of the Commission's Land Use Districts and Standards, the proposed filling and grading is 3,075 square feet in size and is less than the maximum allowed size of 20,000 square feet beyond 250 feet from the lake, is located greater than 50 feet from the access road, and a minimum of 15 feet from property boundary lines.

5. 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 amendment request of Michael W. and Patricia S. Emery with the following Conditions:

1. ***At least one week prior to commencing the permitted activities**, the permittee or the designated agent must contact the Commission staff and notify them of the estimated date construction work will start. Notice may be provided in writing, in person, by email, or by calling. If you leave or send a message, please include your full name, telephone number, permit number, and the date the work will start.*

2. 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.

3. The enclosed permit certificate must be posted in a visible location on your property immediately after receipt and during development of the site and construction of the structures and activities approved by this permit.

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.

5. 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.

6. The scenic character and healthful condition of the area covered under this permit must be maintained. The area must be kept free of litter, trash, junk cars and other vehicles, and any other materials that may constitute a hazardous or nuisance condition.

7. 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.

8. Notwithstanding Condition 2, construction activities authorized within P-FP subdistricts, FEMA zones, and other areas prone to flooding must be substantially started within 180 days 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.

9. **The permitted residential garage must be constructed in the location as proposed. The top of the lowest floor, including basement, must be elevated to at least one foot above the Base Flood Elevation of 303.0 feet NGVD 1929.**

10. The garage authorized under this permit must be set back a minimum of 200 feet from the normal high water mark of Boyd Lake, a minimum of 50 feet from Lake Road North and 15 feet from other property boundary lines.

11. The permitted structure must not exceed 30 feet in height as measured from the peak of the roof to the lowest point of the structure (including the foundation) at the original grade along the downhill side.

12. The permitted structured 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.

13. The permittee 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.

14. **Upon completion of the lowest floor of the permitted structure, a FEMA Elevation Certificate completed by a professional land surveyor or professional engineer must be submitted to the Commission for review and approval prior to any further construction activities.**

15. Once construction is complete, the permittees 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.

16. All conditions of Building Permit BP 9290 and Amendments A, B, and C shall remain in effect except as altered by this amendment.

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 7th DAY OF MAY, 2015.

By: _____
for Nicholas Livesay, Executive Director