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

PAUL R. LEPAGE
GOVERNOR

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COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

PERMIT

DEVELOPMENT PERMIT DP 4984, AFTER-THE-FACT

The staff of the Maine Land Use Planning Commission, after reviewing the application and supporting documents submitted by Bowers Mountain, LLC. for Development Permit DP 4984, finds the following facts:

1. Applicant: Bowers Mountain, LLC.
   c/o Douglas Humphrey
   308 Montgomery Street
   Laurel, Maryland 20707

2. Agent: Steve St. Louis
   PO Box 126
   Milford, Maine 04461

3. Date of Completed Application: August 31, 2015

4. Location of Proposal: Carroll Plantation, Penobscot County, Maine
   Maine Revenue Service Plan 01; Lot 1
   Penobscot County Registry of Deeds Book 10653, Page 344

5. Zoning: (M-GN) General Management Subdistrict
   (P-SL2) Shoreland Protection Subdistrict
   (P-WL1, 2, & 3) Wetland Protection Subdistrict

6. Lot Size: 5,522 acres (owned)

7. Development: Recreational Lodging Facility, Level B

   A. Principal Buildings: Main Lodge/Dining Hall (24 ft. by 35 ft. by 18 ft.), After-the-Fact
   Bunkhouses #1, #2, #3, & #4 (16 ft. by 24 ft. by 15 ft), After-the-Fact
   Bathroom/Shower House (16 ft. by 24 ft. by 15 ft), After-the-Fact
   Incinerator Toilets & Storage Shed (18 ft. by 18 ft. by 13 ft.), After-the-Fact
   Recreation Building (30 foot by 40 foot), Proposed

   B. Accessory Structures: Gravel Parking & Storage Pad (100 ft. by 25 ft.), Existing
   Concrete Propane Generator Pad (12 ft. by 20 ft.), Proposed
   Land Management Storage Building (30 ft by 70 ft), Existing

8. Sewage Disposal: Complete Non-engineered System, Existing

9. Soil/Profile/Condition/Design: 3/C per Subsurface Wastewater Disposal Site Evaluator

10. Affected Waterbody: Unnamed Stream (Minor Flowing Water)

Administrative History and Existing Conditions

11. The applicant owns a 5,522 acre parcel with a 66 foot wide right of way (aka the Dipper Pond Road) off Route 6 and a 66 foot wide right of way (aka the Moose Road) off the Brown Road. The parcel is currently developed with an unauthorized lodging facility, including a main lodge with kitchen and dining facilities, four (4) bunkhouses, a bathroom/shower house, and a storage shed. The lodging facility is located within a General Management Subdistrict (M-GN) and within an existing log landing area. Access to the lodging facility is from an existing driveway off the Dipper Pond Road. The main lodge and bathhouse are served by an existing combined subsurface wastewater disposal system. The parcel is further developed with a 30 foot by 96 foot land management storage building located in a separate area from the lodging facility within a General Management Subdistrict (M-GN). Access to the storage building is from the Moose Road, a gated private road. Fill located less than 75 feet from an unnamed minor flowing water associated with Enforcement Case EC 2008-59 has been removed and the area revegetated. *[Reference: Enforcement Case EC 2008-59, Resolved with this permit]*

Proposal

12. Site Description. While the 5,522 acre parcel is contained within numerous land use districts, the proposed development will take place entirely within the General Management Subdistrict (M-GN). The property encompasses Dipper Pond (P-WL1), a shallow, unclassified 4 acre pond, several mapped wetlands (P-WL2 & 3) and minor flowing waters (P-SL2). The lands surrounding the lodging facility are actively administered as forest management lands.

13. The applicant now seeks approval for a Level B, Recreational Lodging Facility and after-the-fact approval for the construction a 24 foot by 35 foot main lodge with kitchen and dining facilities, four 16 foot by 24 foot bunkhouses, a 16 foot by 24 foot bathroom/shower house, an 18 foot by 18 foot storage shed, and the installation of a combined sewage disposal system that serves the facility. The main lodge is located greater than 100 feet from a minor flowing water, approximately 25 feet from an unmapped wetland (P-WL3), the bathroom/shower house is located greater than 100 feet from both the minor flowing water and the unmapped wetland, bunkhouses #3 and #4 and the storage shed are located greater than 100 feet from the minor flowing water and approximately 30 feet from an unmapped wetland (P-WL3), bunkhouses #1 and #2 are located approximately 75 feet from the minor flowing water and any P-WL1 wetland associated with the minor flowing water. The applicant also proposes to construct a 30 foot by 40 foot recreation building on posts within the existing storage pad area. The recreation building would be located a minimum of 100 feet from the unnamed minor flowing water and any P-WL1 wetland associated with the minor flowing water. The applicant further proposes to construct a 12 foot by 20 foot concrete generator pad to be located greater than 100 feet from the minor flowing water and any P-WL1 wetland associated with the minor flowing water. All existing and proposed structures would be located approximately 900 feet from the Dipper Pond Road and approximately 700 feet from the closest boundary line.

14. Recreational Lodging Facility Factors. The applicant submitted Supplement S-6, which provides information relevant to the categorization of recreational lodging facilities. In the Supplement, the applicant indicates:
    A. *On-site recreation activities, features, and/or services.* The applicant proposes to run a fishing, hunting, and recreational guide service and provide activities such as cross country skiing, hiking, ATVing, and snowmobiling (to guests only). A small fire pit, considered a low noise, odor and mostly screened activity is available for guest use.
    B. *Utilities.* The main lodge and shower house will have indoor plumbing and will be served by a portable generator.
    C. *Floor area of principal building.* The floor area of all existing and proposed principal buildings is 3,960 square feet.
    D. *Clearing footprint within 250 feet of water bodies.* Not applicable.
    E. *Retail.* None.
    F. *Dining amenities.* On-site kitchen and dining area in the main lodge for guest use only.
    G. *Fuel Sales.* None.
    H. *Overnight Occupancy.* Up to fourteen (14) guests occupancy.

Review Comments

15. The Maine Natural Areas Program has reviewed the applicant's proposal and states that, according to its current information, there are no rare botanical features that will be disturbed within the project site.

16. The Maine Historic Preservation Commission has reviewed the applicant's proposal and concludes that there will be no historic properties affected by the proposal, as defined by Section 106 of the National Historic Preservation Act. Consequently, pursuant to 36 CFR 800.4(d)(1), no further Section 106 consultation is required unless additional resources are discovered during project implementation pursuant to 36 CFR 800.13.

17. The Maine Department of Inland Fisheries and Wildlife has reviewed the applicant's proposal and states that there is a mapped Significant Vernal Pool on the northwest of the project site, Significant Vernal Pools include a 250 foot upland buffer surrounding the pool and, therefore, recommend that any further expansion of the project area be conducted on the south side of the access road.

18. The Maine Department of Health and Human Services, Division of Environmental Heath, Subsurface Wastewater Unit has reviewed the applicant's proposal and had no comments.

19. The Maine State Soil Scientist has reviewed the application and initially had concerns about the soils in the project site which, according to the NRCS soil map, are Monarda which are poorly drained and hydric. However, after an on-site evaluation the State Soil Scientist has found the project area to be a non-hydric inclusion within a previously disturbed log yard area and had no further concerns.

20. The Penobscot County Commissioner's Office has reviewed the applicant's proposal and had no comments.

SUMMARY OF KEY STANDARDS

21. Under the provisions of Section 10.02, 168 of the Commission's *Land Use Districts and Standards* (Standards), "Recreational Lodging Facilities" are defined as: Site improvements, a building or group

of buildings, or any part thereof, used, maintained, advertised or held out to the public as a place where sleeping accommodations are furnished to the public for commercial purposes. Recreational lodging facilities primarily cater to recreational users who engage in recreation activities that are primarily natural resource-based. The term includes, but is not limited to, commercial sporting camps, youth or group camps, back-country huts, rental cabins, outpost cabins, campgrounds, lodges, hotels, motels, inns, or any combination of these types of uses that exhibit characteristics of a unified approach, method or effect such as unified ownership, management or supervision, or common financing. To be included in a recreational lodging facility, rental units must be served by an on-site attendant while guests are present. Related development that is located more than one half mile, measured in a straight line, from the nearest structure providing guest services, such as dining, gathering places, retail shower house, dumping station, check-in office, and equipment rental shall be considered a separate facility, unless the owner chooses to consider them as one facility. Caretaker or attendant housing will not be used to establish the one half mile distance unless no other guest services are provided. If no guest services are provided then all development on the regulatory parcel shall be considered part of the same facility and may be part of a facility on an adjoining parcel. For the purposes of Land Use Planning Commission rules, recreational lodging facilities are divided into five levels: [Levels A through E].

Level B Facilities have low impacts on existing resources within the development site and surrounding areas. Level B facilities are specifically designated by Section 10.27,Q,1.

Level B recreational lodging facilities may be allowed within M-GN subdistricts upon issuance of a permit from the Commission pursuant to 12 M.R.S. §685-B, and subject to the applicable requirements set forth in Sub-Chapter III.

22. The applicable Level B recreational lodging facilities factors, for this proposal in the M-GN subdistrict, include the following (*Ch.10, Section 10.27,Q,1, Table A*):
    A. on-site recreation activities, features, and/or services as defined in Ch. 10.02,167 that produce low noise, odor and are mostly screened;
    B. may be served by public utilities and/or indoor plumbing;
    C. floor area of principal builidngs up to 8,000 square feet;
    D. dining amenities and recreation activities, features and /or services as defined in Ch.10.02,167, which are available to guests only; and
    E. overnight occupancy for up to 100 persons.

23. The dimensional requirements of the Commission's Standards applicable to this recreational lodging facility include:
    A. a minimum lot size of 40,000 square feet (*Ch. 10.26,A,2*);
    B. a minimum road frontage of 200 feet (*Ch. 10.26,C,1,b*);
    C. minimum setbacks for those structures constructed solely for the housing of guests (*Ch. 10.26,D,1*):
        1) 75 feet from the nearest shoreline of a flowing water draining less than 50 square miles and wetlands designated as P-WL1 subdistricts;
        2) 50 feet from the traveled portion of the nearest roadway; and
        3) 15 feet from other property boundary lines.
    D. minimum setbacks for structures and parking areas (*other than those structures constructed solely for the housing of guests*) (*Ch. 10.26,D,2*):
        1) 100 feet from the nearest shoreline of a flowing water draining less than 50 square miles and wetlands designated as P-WL1 subdistricts;

2) 75 feet from the traveled portion of the nearest roadway; and
3) 25 feet from other property boundary lines.

E. a maximum lot coverage of 30% (*Ch. 10.26,E,1*)

24. The lands surrounding the recreational lodging facility are actively administered as forest management lands. The facility has retained vegetative buffers between the land management road/timber harvesting activities and the development to minimize any visual impact. Additionally, Dipper Pond Road bisects the property from north to south on the western edge of the parcel, providing sufficient access to accommodate the traffic and activity generated by the facility while not unreasonably interfering with existing uses. Additionally, a buffer has been maintained between the development and the Significant Vernal Pool (SVP) identified by the Department of Inland Fisheries & Wildlife and an unnamed minor flowing water. No development is proposed within the 250 foot SVP buffer or within 75 feet of the minor flowing water for structures constructed solely for the housing of guests. Recreational uses in the region include camping, hiking, fishing, boating, ATVing, and snowmobiling. Any future development impacts would be conducted at the permit review stage.

25. Under the provisions of Section 10.22,A,3,b(8) of the Commission's *Land Use Districts and Standards,* forest manangement activities, except for timber harvesting, involving the operation of machinery and the erection of buildings including buildings to store equipment and materials for maintaining roads and other structures used primarily for forest management activities shall be allowed without a permit from the Commission within M-GN subdistricts subject to the applicable requirements set forth in Sub-Chapter III.

26. The facts are otherwise as represented in Development Permit DP 4984, Enforcement Case EC 2008-59, and supporting documents.

Based upon the above Findings, and subject to the Conditions listed below, the staff concludes:

1. The facility meets the definition of a Recreational Lodging Facility under Section 10.02, of the Commission's Standards because the site and facility will:
   A. be used, maintained, advertised or held out to the public as a place where sleeping accommodations are furnished to the public for commercial purposes;
   B. primarily cater to recreational users who engage in recreation activities that are primarily natural resource-based;
   C. include or be similar to commercial sporting camps, youth or group camps, back-country huts, rental cabins, outpost cabins, campgrounds, lodges, hotels, motels, inns, or any combination of these types of uses that exhibit characteristics of a unified approach, method or effect such as unified ownership, management or supervision, or common financing; and
   D. be served by an on-site attendant while guests are present.

2. In accordance with Section 10.27,Q,1,Tables A and B, of the Commission's Standards, the facility constitutes a Level B Recreational Lodging Facility. Specifically, the construction of the 24 foot by 35 foot main lodge/dining hall meets all applicable standards for construction and is consistent with Tables A and B. The floor area for all principal buildings upon completion is approximately 3,960 square feet, which is less than the maximum 8,000 square feet allowed for a Level B Facility. The recreational activities offered would be fishing, hunting, and recreational guide service, as well as off-facility ATVing, and snowmobiling (to guests only). An on-site fire pit would be available for guest

use. On-site kitchens in the main lodge are for guest use only. The total overnight occupancy would be less than the 100 maximum allowed in a Level B Facility.

3. In accordance with Section 10.26, the existing lot, driveway, parking area, and existing and proposed structures will meet the applicable dimensional requirements.

4. In accordance with Section 10.22,A,3,b(8) of the Commission's Standards, the 30 foot by 70 foot storage building located off-site on the Moose Road constitutes a forest management activity that is allowed without a permit within the M-GN subdistrict. Specifically, the building is used primarily for forest management equipment storage and meets the applicable requirements set forth in Sub-Chapter III.

5. All existing and proposed activities will meet the Criteria for Approval, section 685-B(4) of the Commission's Statutes, 12 M.R.S.

Therefore, the staff approves the request of Bowers Mountain, LLC 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. 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.

4. The permittee shall secure and comply with all other applicable licenses, permits, and authorizations of all federal, state and local agencies including, but not limited to, the Maine Department of Environmental Protection, the United States Fish and Wildlife Service and the Federal Aviation Administration.

5. 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.

6. Structures authorized under this permit must not be sited on a ridge or knoll such that they are visible above the tree line from any water body. All authorized structures must be located,

designed and landscaped to reasonably minimize their visual impact on the surrounding area, particularly when viewed from existing roadways or shorelines.

7. **The 30 foot by 40 foot recreation building and 12 foot by 20 foot concrete generator pad authorized under this permit must be located a minimum of 100 feet from the unnamed minor flowing water and any P-WL1 wetlands associated with the minor flowing water, 75 feet from the Dipper Pond Road, and 25 feet from other property boundary lines.**

8. All parking areas and all structures within the recreational lodging facility constructed solely for the housing of guests must be set back a minimum of 75 from the nearest shoreline of a flowing water draining less than 50 square miles and from the upland edge of wetlands designated as P-WL1 subdistricts, a minimum of 50 feet from the traveled portion of the Dipper Pond Road, and at least 15 feet from other property boundary lines. All other structures within the recreational lodging facility must be set back a minimum of 100 feet from the nearest shoreline of a flowing water draining less than 50 square miles and from the upland edge of wetlands designated as P-WL1 subdistricts, a minimum of 75 feet from the traveled portion of Dipper Pond Road, and 25 feet from other property boundary lines.

9. 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.

10. Nothing in this permit shall be construed to release the permittees from any liability or responsibility arising from any violation, including Enforcement Case EC 2008-59, 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 permittee complies 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 13th DAY OF OCTOBER, 2015.

By: Debra A. Kaczowski
for Nicholas D. Livesay, Executive Director